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Presidential Documents

Title 3—

The President

Proclamation 7801 of July 2, 2004

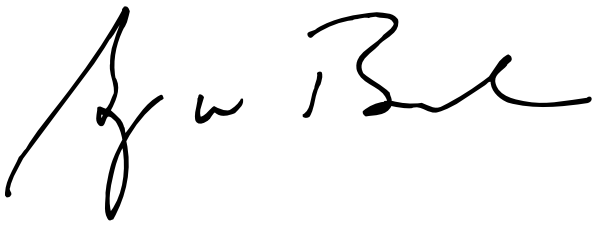
Returning the Flag of the United States to Full-Staff

By the President of the United States of America

A Proclamation

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, and in honor and tribute to the memory of Ronald Reagan, it is hereby ordered that the flag of the United States shall be displayed at full-staff at the White House and on all buildings, grounds, and Naval vessels of the United States beginning July 3, 2004. I also direct that beginning on that same date, the representatives of the United States in foreign countries shall make similar arrangements for the display of the flag at full-staff over their Embassies, Legations, and other facilities abroad, including all military facilities and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–15647
Filed 7–7–04; 8:45 am]
Billing code 3195–01–P

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–052–2]

Karnal Bunt; Compensation for Custom Harvesters in Northern Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Technical amendment.

SUMMARY: In an interim rule published in the **Federal Register** on May 5, 2004, we amended the Karnal bunt regulations to provide for the payment of compensation to custom harvesters for losses they incurred due to the requirement that their equipment be cleaned and disinfected after four counties in northern Texas were declared regulated areas for Karnal bunt during the 2000–2001 crop season. We also amended the regulations to provide for the payment of compensation to owners or lessees of other equipment that came into contact with Karnal bunt-positive host crops in those counties and was required to be cleaned and disinfected during the 2000–2001 crop season. The interim rule contained a deadline of September 2, 2004, for the submission of claims for compensation; in this document, we are extending the deadline to December 31, 2004.

EFFECTIVE DATE: This amendment is effective July 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Spaide, Senior Program Advisor, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737; (301) 734–3769.

SUPPLEMENTARY INFORMATION: In an interim rule published in the **Federal Register** on May 5, 2004 (69 FR 24909–24916, Docket No. 03–052–1), we amended the Karnal bunt regulations in 7 CFR part 301 to provide for the payment of compensation to custom harvesters for losses they incurred due to the requirement that their equipment be cleaned and disinfected after four counties in northern Texas were declared regulated areas for Karnal bunt during the 2000–2001 crop season. We also amended the regulations to provide for the payment of compensation to owners or lessees of other equipment that came into contact with Karnal bunt-positive host crops in those counties and was required to be cleaned and disinfected during the 2000–2001 crop season.

In the May 2004 interim rule, we required that claims for the Karnal bunt compensation provided for by the interim rule had to be received by the Animal and Plant Health Inspection Service on or before September 2, 2004. That September 2004 date provided custom harvesters and others eligible for compensation with 120 days from the interim rule's publication to compile and submit the documents that must accompany claims for compensation under the interim rule. However, because custom harvesters are typically away from their places of business during the summer while harvesting, and thus may not have ready access to the documents required by the interim rule, the September 2, 2004, deadline may make it extremely difficult for some custom harvesters to submit their compensation claims on time. Therefore, we are extending the deadline for compensation claims from September 2, 2004, to December 31, 2004.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.89–16 [Amended]

■ 2. In § 301.89–16, the introductory text of paragraph (d) is amended by removing the date ''September 2, 2004'' and adding the date ''December 31, 2004'' in its place.

Done in Washington, DC, this 1st day of July 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15492 Filed 7–7–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 04–17]

RIN 1557–AC86

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1205]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC82

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2004–28]

RIN 1550–AB91

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint interim rule with request for comment.

SUMMARY: The OCC, Board, FDIC and OTS (collectively, ''we'' or ''the

agencies'') are publishing this joint interim rule with request for comment to conform our regulations implementing the Community Reinvestment Act (CRA) to changes in: the Standards for Defining Metropolitan and Micropolitan Statistical Areas published by the U.S. Office of Management and Budget (OMB) in December 2000; census tracts designated by the U.S. Bureau of the Census (Census); and the Board's Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). We are also making a technical correction to a cross-reference within our CRA regulations.

This joint interim rule does not make substantive changes in the requirements of the CRA regulations. We are publishing this document as a joint interim rule because the changes made by OMB, Census, and the Board have already become effective. Further, financial institutions must use OMB's statistical area standards, Census' geographies, and the Board's Regulation C, when adjusting assessment area delineations and collecting CRA loan data, beginning January 1, 2004.

DATES: This joint interim rule is effective on July 8, 2004. Comments are due by September 7, 2004.

ADDRESSES: *OCC:* Comments: Your comment must designate ''OCC'' and include Docket Number 04–17 or Regulatory Information Number (RIN) 1557–AC86. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. Because paper mail in the Washington area and at the OCC may be subject to delays, please submit your comment by e-mail or fax whenever possible. However, you may submit your comment by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

OCC Web site: *http://www.occ.treas.gov.* Click on ''Contact the OCC.'' Next, scroll down and click on ''Comments on Proposed Regulations.''

E-mail Address: *regs.comments@occ.treas.gov.*

Fax: (202) 874–4448.

Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219.

Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Docket Information: For access to the docket to read comments received or background documents you may:

View Docket Information in Person: You may personally inspect and photocopy docket information at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect the docket by calling us at (202) 874–5043.

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Request copies: You may request that we send you a paper copy of docket information by faxing us at (202) 874–4448, by calling us at (202) 874–5043, or by mailing the OCC at 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Board: You may submit comments, identified by Docket No. R–1205, by any of the following methods:

Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

Fax: 202/452–3819 or 202/452–3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Mail: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comment on the agency Web site.

E-mail: You may also electronically mail comments to *comments@fdic.gov.*

Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: You may submit comments, identified by No. 2004–28, by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

E-mail: *regs.comments@ots.treas.gov.* Please include No. 2004–28 in the subject line of the message and include your name and telephone number in the message.

Fax: (202) 906–6518.

Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–28.

Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–28.

Instructions: All submissions received must include the agency name and number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: *OCC:* Karen Tucker, National Bank Examiner, Compliance Division, (202) 874–4428; or Margaret Hesse, Special Counsel, Community and Consumer

Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: William T. Coffey, Senior Review Examiner, (202) 452–3946; Catherine M.J. Gates, Oversight Team Leader, (202) 452–3946; Kathleen C. Ryan, Counsel, (202) 452–3667; or Dan S. Sokolov, Senior Attorney, (202) 452–2412, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Pamela Freeman, Policy Analyst, (202) 898–6568, Division of Supervision and Consumer Protection; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Project Manager, Compliance Policy, (202) 906–7990; Theresa A. Stark, Program Manager, Compliance Policy, (202) 906–7054; or Richard Bennett, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

The agencies jointly are amending our regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). This joint interim rule conforms the agencies' CRA regulations to recent actions of OMB, Census, and the Board. (This joint interim rulemaking is unrelated to the agencies' comprehensive review of the CRA regulations and the proposed revisions to the regulations that were published for comment on February 6, 2004, at 69 FR 5729.)

Changes Resulting From OMB Revisions

The OMB's standards for defining statistical areas provide nationally consistent definitions for government agencies to use when collecting, tabulating, and publishing Federal statistics by geographic area. OMB updates the standards approximately every 10 years.

The agencies' CRA regulations use OMB's standards for defining metropolitan areas for purposes of CRA data collection and reporting, and for delineating institutions' assessment area(s). Under OMB's 1990 standards, metropolitan areas consisted of: (1) Metropolitan statistical areas (MSAs) and (2) larger consolidated metropolitan statistical areas (CMSAs). CMSAs consisted, in turn, of primary metropolitan statistical areas (PMSAs).

On December 27, 2000, OMB published in the **Federal Register** a notice adopting new Standards for Defining Metropolitan and Micropolitan Statistical Areas. 65 FR 82228 (Dec. 27, 2000). These new standards replaced and superseded OMB's 1990 standards for defining metropolitan areas. The 2000 standards retain the basic concept of an MSA (an area with at least 50,000 population) and continue to recognize that in large MSAs, demographic and economic conditions vary widely. According to OMB, those variations necessitate dividing large MSAs into ''metropolitan divisions,'' smaller statistical areas similar to PMSAs.[1] Metropolitan divisions are only in MSAs that have a single core with a population of at least 2.5 million.

More than two years later, in June 2003, OMB announced the specific boundaries of the new MSAs, metropolitan divisions, and other statistical areas based on data from the 2000 Census. OMB Bulletin No. 03–04 (June 6, 2003), available at *http://www.whitehouse.gov/omb/bulletins/b03-04.html.* OMB updated the list of MSAs and other statistical areas effective December 2003, in a bulletin issued in February 2004. OMB Bulletin No. 04–03 (February 18, 2004) available at *http://www.whitehouse.gov/omb/bulletins/b0-03.html.* In these bulletins, OMB directed all agencies that conduct statistical activities to collect and publish data for MSAs using the most recent definition of the area. To that end, the agencies have made a number of changes to the CRA regulations, which until now have conformed to OMB's 1990 statistical area standards, to incorporate OMB's new standards and definitions.

First, we removed the definition of ''CMSA'' and all references to CMSAs in our regulations because OMB no longer uses that term. We replaced ''CMSA'' with ''MSA.''

Second, we revised the definition of ''MSA'' (§§ 25.12(r), 228.12(r), 345.12(r), and 563e.12(q)) to remove the reference to PMSA, another term that OMB no longer uses. The revised definition of ''MSA'' refers only to metropolitan statistical areas, as defined by OMB.

Third, we added a definition of ''metropolitan division'' (new §§ 25.12(q), 228.12(q), 345.12(q), and 563e.12(p)). In certain MSAs, OMB has delineated ''metropolitan divisions'' which are the statistical areas for which CRA data are to be reported, median family income is to be calculated, and within which an institution's CRA performance is to be evaluated. These uses of the metropolitan divisions are consistent with the use of OMB's 1990 standards in our CRA regulations in effect prior to this joint interim rule: Institutions reported the location of loans by PMSA if the loan was located in a CMSA; the agencies evaluated the institution's performance at the PMSA level; and the agencies calculated median family income by PMSA, not by CMSA. Focusing on performance at the metropolitan division level also is consistent with OMB's recent direction to Federal agencies to provide detailed data for each metropolitan division, in explanation of which OMB noted that ''[a] Metropolitan Division is most generally comparable in concept, and equivalent to, the now obsolete Primary Metropolitan Statistical Area.'' OMB Bulletin 04–03.

The agencies are aware that in some MSAs, OMB's new designations of metropolitan divisions will result in the income level of census tracts changing without any actual change in the economic conditions of the area. Based on estimated data, the agencies believe that in most MSAs, any such changes will be *de minimus*. For example, many MSAs show negligible change in the median family income levels of census tracts. On the other hand, in the Detroit-Warren-Livonia MSA, changes in census tract income level may be significant; the application of OMB's 2000 standards resulted in two metropolitan divisions, one consisting of Wayne county, which includes the inner city, and one consisting of the suburban counties that surround Wayne county. A number of geographies in the suburban metropolitan division that previously were classified as middle-income are now moderate-income, while in the urban metropolitan division (Wayne county), a similar number of moderate-income geographies are now middle-income. Examiners will consider these differences and the effect they may have on an institution's CRA performance as part of the performance context applicable to the institution's CRA examination and in connection with the institution's delineation of assessment area(s).

Fourth, we changed our regulations (§§ 25.41, 228.41, 345.41, and 563e.41) to allow an institution to designate an assessment area that includes one or more metropolitan divisions, just as an institution until now could designate an

[1] ''The provision of data for only the entire metropolitan area based on such large urbanized areas may mask demographic and economic variations that are important for data users and analysts.'' Final Report and Recommendations from the Metropolitan Areas Standards Review Committee to OMB Concerning Changes to the Standards for Defining Metropolitan Areas, 65 FR 51060, 51067 (Aug. 22, 2000).

assessment area that includes one or more PMSAs. Under this joint interim rule, an institution may designate one or more metropolitan divisions, up to an entire MSA, as an assessment area.

Although the agencies' regulations prior to publication of this joint interim rule allowed an institution to delineate an entire CMSA as an assessment area, examiners have evaluated CRA performance at the PMSA level, using PMSA income data. Under this joint interim rule, examiners will evaluate CRA performance at the metropolitan division level, even if the institution delineates an assessment area of more than one metropolitan division or an entire MSA.

Fifth, prior to this joint interim rule, §§ 25.41(e)(4), 228.41(e)(4), 345.41(e)(4), and 563e.41(e)(4) stated that an assessment area ''may not extend substantially beyond a CMSA boundary * * *.'' We have changed these provisions to replace ''CMSA'' with ''MSA.'' These changes conform the terminology in this section to the new OMB area standards. The regulations still allow an institution to delineate an assessment area consisting of more than one MSA. See §§ 21.41(c)(1), 228.41(c)(1), 345.41(c)(1), and 563e.41(c)(1). The border of such an assessment area, however, may not extend substantially beyond the boundaries of the MSAs in the assessment area.

Sixth, we added a new definition of ''nonmetropolitan area,'' which is any area that is not included in an MSA (new §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r)). This definition will encompass areas covered by the new OMB term ''micropolitan statistical area.'' Because micropolitan statistical areas are not located in MSAs, they are part of the nonmetropolitan area of a state. In a related matter, the agency-prepared annual aggregate disclosure statements will continue to include a statement for the non-MSA portion of every state, which will include all micropolitan statistical areas in the state. We changed the reference to ''non-MSA portion of each state'' in §§ 25.42(i), 228.42(i), 345.42(i), and 563e.42(i) to ''nonmetropolitan portion of each state'' to ensure clarity.

Changes Resulting From Census Revisions

Prior to this joint interim rule, the CRA regulations (former §§ 25.12(l), 228.12(l), 345.12(l), and 563e.12(k)) defined the term ''geography'' as ''a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.'' Prior to Census 2000, a ''block numbering area'' was a statistical subdivision created for grouping and numbering blocks within a county for which census tracts had not been established. Beginning with Census 2000, the Bureau of Census assigned census tracts in all counties, making block numbering areas unnecessary. See, e.g., U.S. Census Bureau, Geographic Terms and Concepts (definition of ''census tract'') available at *http://www.census.gov/geo/www/tiger/glossry2.html#CensusTract.* As a result, we changed our definition of ''geography'' to omit the term ''block numbering area'' (§§ 25.12(k), 228.12(k), 345.12(k), and 563e.12(j)).

The definition of ''geography'' affects assessment area delineation and data collection and reporting. First, when delineating an assessment area, a financial institution must include only whole geographies. Second, data about small business, small farm, community development, and consumer loans include loan location, which is the geography (census tract) in which the loan or borrower is located.

Changes Resulting From Revisions to the Board's Regulation C

Prior to this joint interim rule, the CRA regulations defined a ''home mortgage loan'' to mean a ''home improvement loan'' or a ''home purchase loan'' as defined in 12 CFR 203.2. The interagency CRA guidance that we published clarified that this definition of ''home mortgage loan'' also includes refinancings of home improvement and home purchase loans. See 66 FR 36620, 36628 (July 12, 2001) (question 1 addressing §§ ____.12(m) & 563e.12(l)).

The Board substantially revised Regulation C (12 CFR 203) in 2002, effective January 1, 2004. 67 FR 7222 (Feb. 15, 2002). Before these revisions, a lender could choose among four standards to determine which refinancings to report; two of the standards considered the purpose of the loan being refinanced. The revised Regulation C replaced this approach with a definition of ''refinancing'' that applies uniformly, namely, a loan is reportable as a refinancing if an obligation satisfies and replaces another obligation, and both the existing obligation and the new obligation are secured by a lien on a dwelling. 12 CFR 203.2(k). Under this definition, the purpose of the loan being refinanced is not considered. Furthermore, if the obligation meets the definition of a ''refinancing'' under the revised Regulation C, then it is reportable even if it is not a ''refinancing'' under Regulation Z requiring new disclosures. See 12 CFR 226.20(a). As a result of the revisions to Regulation C, we changed the definition of ''home mortgage loan'' in the CRA regulations to include refinancings, as well as home purchase loans and home improvement loans, as defined in 12 CFR 203.2.

In some cases, the new definition of ''home mortgage loan'' could lead to ''double counting'' of certain loans because refinancings reported under HMDA and evaluated under CRA may also be reported as refinancings of small business or small farm loans under CRA. The definition of ''small business loan'' under the CRA regulations incorporates the Consolidated Report of Condition and Income (Call Report) or Thrift Financial Report (TFR) definition of ''loans to small businesses.'' See §§ 25.12(u), 228.12(u), 345.12(u), and 563e.12(t). The Call Report and TFR instructions exclude from this category loans secured by residential real estate. See Schedule RC–C, part II, Loans to Small Businesses and Small Farms; Schedule RC–C, part I, item 1.e.; Schedule RC–C, part I, item 4 (list of exclusions); see also TFR Schedule SB. However, a loan secured by real estate nonetheless is considered not secured by real estate for purposes of the Call Report instructions if the security interest is taken ''solely through an abundance of caution and where the terms as a consequence have not been made more favorable than they would have been in the absence of the lien.'' See Call Report Glossary definition of ''Loan Secured by Real Estate.'' Thrifts, on the other hand, have the option of reporting such loans as small business loans or home mortgage loans. See TFR Instructions and Schedule SB.

Under this standard, a financial institution could report a loan secured by a dwelling as a small business loan. If such a loan were to a small business, as ''loan to small business'' is defined in the Call Report and TFR instructions, the institution would report the loan, for CRA purposes, as a small business loan. A refinancing of such a loan, moreover, would be reported for CRA purposes as a refinancing of a small business loan. If the refinancing is secured by a dwelling and it satisfies or replaces another loan that was secured by a dwelling, the refinancing would also be reported as a refinancing of a mortgage loan under HMDA and, therefore, also considered as a ''home mortgage loan'' in the institution's CRA evaluation.

Similarly, some refinancings of small farm loans that are reported as small farm loans on Schedule RC–C, part II of the Call Report and TFR Schedule SB and, thus, are included as small farm loans for CRA data reporting purposes,

are also reported as refinancings under HMDA and captured as home mortgage loans for CRA evaluation purposes. Schedule RC–C, part II and TFR Schedule SB require reporting of ''loans secured by farmland (including farm residential and other improvements)'' and ''loans to finance agricultural production and other loans to farms'' that have original amounts of $500,000 or less. Loans in either category could be secured by a dwelling, either primarily as part of the farmland, in the first category, or through an abundance of caution, in the second category. Institutions would report refinancings of such loans on the Call Report and the TFR as loans to small farms and also under HMDA as refinancings.

We do not anticipate that loans counted as both ''small business/small farm loans'' and ''home mortgage loans'' will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business or farm loans, examiners will consider that overlap in evaluating the institution's performance.

Technical Correction

We also have corrected an error in the cross-reference found in §§ 25.27(g)(1), 228.27(g)(1), 345.27(g)(1), and 563e.27(g)(1). Those provisions, which address the time for an agency's decision following receipt of a completed strategic plan, previously referred the reader to paragraph (d) of §§ 25.27, 228.27, 345.27, or 563e.27, respectively, for a description of the materials that had to be included with a strategic plan submission. This information is found instead in paragraph (e) of §§ 25.27, 228.27, 345.27, or 563e.27. Therefore, we corrected the cross-references in §§ 25.27(g)(1), 228.27(g)(1), 345.27(g)(1), and 563e.27(g)(1) to refer to paragraph (e) of §§ 25.27, 228.27, 345.27, and 563e.27, respectively.

Timing and Comments

This joint interim rule is effective immediately. Institutions must be aware of these changes when designating their assessment areas and collecting CRA performance data for calendar year 2004, which must be reported by March 1, 2005. Financial institutions and others who wish to express their views about the appropriateness of these changes are encouraged to send comments to the agencies. We will consider the comments and, if appropriate, address them when we adopt this joint interim rule as a final rule.

Effective Date

The Administrative Procedure Act provides that, subject to several exceptions, a substantive rule may not be made effective until 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). However, an agency may make a rule immediately effective upon publication if the agency finds good cause for doing so and publishes its findings with the rule. Likewise, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103–325, authorizes a banking agency to issue a rule to be effective before the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

This joint interim rule takes effect immediately. The agencies find good cause to dispense with the 30-day delayed effective date pursuant to 5 U.S.C. 553(d)(3). The agencies also have determined that good cause exists to adopt an effective date that is before the first day of the calendar quarter that begins on or after the date on which the regulation is published, as would otherwise be required by section 102 of the CDRI (12 U.S.C. 4802(b)(1)). As discussed more fully earlier in this preamble, the changes adopted in this joint interim rule merely conform our CRA regulations to recent changes by OMB, Census, and the Board. These changes are not substantive; the technical correction merely corrects a cross-reference. Financial institutions must use the new statistical area standards and definitions when adjusting assessment area delineations and collecting loan data during calendar year 2004 (beginning with loans made as of January 1, 2004) for reporting by March 1, 2005. Therefore, this joint interim rule must take effect immediately upon publication in the **Federal Register** in order to eliminate potential confusion for financial institutions attempting to comply with their 2004 data collection requirements. For the foregoing reasons, the agencies have determined that it is unnecessary and contrary to public interest to delay the effective date of this joint interim rule.

Regulatory Analysis

Paperwork Reduction Act

There are no collection of information requirements in this joint interim rule.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the OCC, Board, FDIC, and OTS hereby certify that this joint interim rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this joint interim rule will not have significant secondary or incidental effects on a substantial number of small entities, or create any additional burden on small entities. This joint interim rule merely makes a technical correction and conforms terminology in the current CRA regulations with terms and definitions already adopted by OMB, Census, and the Board. Accordingly, a regulatory flexibility analysis is not required.

OCC and OTS Executive Order 12866 Determination

The OCC and the OTS have determined that this joint interim rule is not a significant regulatory action as defined in Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the OTS have determined that this joint interim rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, neither agency has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

The Treasury and General Government Appropriations Act, 1999—Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this joint interim rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of

1999, Pub. L. 105–277 (5 U.S.C. 601 note).

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. We invite comments on whether this joint interim rule is stated clearly and effectively organized, and how we might make the regulatory text easier to read.

OCC Executive Order 13132 Determination

The OCC has determined that this joint interim rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons discussed in the joint preamble, part 25 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

■ 2. In § 25.12:

■ a. Revise paragraph (b)(1);
■ b. Remove paragraph (g);
■ c. Redesignate paragraphs (h), (i), (j), (k), (l), and (m) as paragraphs (g), (h), (i), (j), (k), and (l);
■ d. Revise newly redesignated paragraphs (k) and (l);
■ e. Redesignate paragraphs (n), (o), (p), and (q) as paragraphs (m), (n), (o), and (p);
■ f. Add a new paragraph (q);
■ g. Revise paragraph (r);
■ h. Redesignate paragraphs (s), (t), (u), (v), and (w) as (t), (u), (v), (w), and (x); and
■ i. Add a new paragraph (s) to read as follows:

§ 25.12 Definitions.

* * * * *

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

* * * * *

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a ''home improvement loan,'' ''home purchase loan,'' or a ''refinancing'' as defined in § 203.2 of this title.

* * * * *

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

* * * * *

■ 3.Amend § 25.27(g)(1) by removing the term ''paragraph (d)'' and adding in its place the term ''paragraph (e)''.

■ 4. In § 25.41, revise paragraphs (b), (c)(1) and (e)(4) to read as follows:

§ 25.41 Assessment area delineation.

* * * * *

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) * * *

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

* * * * *

(e) * * *

* * * * *

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

* * * * *

■ 5. In § 25.42, revise paragraph (i) to read as follows:

§ 25.42 Data collection, reporting, and disclosure.

* * * * *

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 228, 345, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

■ For the reasons discussed in the joint preamble, part 228 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. In § 228.12:
■ a. Revise paragraph (b)(1);
■ b. Remove paragraph (g);
■ c. Redesignate paragraphs (h), (i), (j), (k), (l), and (m) as paragraphs (g), (h), (i), (j), (k), and (l);
■ d. Revise newly redesignated paragraphs (k) and (l);
■ e. Redesignate paragraphs (n), (o), (p), and (q) as paragraphs (m), (n), (o), and (p);
■ f. Add a new paragraph (q);
■ g. Revise paragraph (r);
■ h. Redesignate paragraphs (s), (t), (u), (v), and (w) as (t), (u), (v), (w), and (x); and
■ i. Add a new paragraph (s) to read as follows:

§ 228.12 Definitions.

* * * * *

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

* * * * *

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a ''home improvement loan,'' ''home purchase loan,'' or a ''refinancing'' as defined in § 203.2 of this title.

* * * * *

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

* * * * *

■ 3. Amend § 228.27(g)(1) by removing the term ''paragraph (d)'' and adding in its place the term ''paragraph (e)''.

■ 4. In § 228.41, revise paragraphs (b), (c)(1) and (e)(4) to read as follows:

§ 228.41 Assessment area delineation.

* * * * *

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) * * *

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

* * * * *

(e) * * *

* * * * *

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

* * * * *

■ 5. In § 228.42, revise paragraph (i) to read as follows:

§ 228.42 Data collection, reporting, and disclosure.

* * * * *

(i) *Aggregate disclosure statements.* The Board, in conjunction with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 345, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the Board may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

■ For the reasons discussed in the joint preamble, the Board of Directors of the FDIC amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 2. In § 345.12:
■ a. Revise paragraph (b)(1);
■ b. Remove paragraph (g);
■ c. Redesignate paragraphs (h), (i), (j), (k), (l), and (m) as paragraphs (g), (h), (i), (j), (k), and (l);
■ d. Revise newly redesignated paragraphs (k) and (l);
■ e. Redesignate paragraphs (n), (o), (p), and (q) as paragraphs (m), (n), (o), and (p);
■ f. Add a new paragraph (q);
■ g. Revise paragraph (r);
■ h. Redesignate paragraphs (s), (t), (u), (v), and (w) as (t), (u), (v), (w), and (x); and
■ i. Add a new paragraph (s) to read as follows:

§ 345.12 Definitions.

* * * * *

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

* * * * *

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a ''home improvement loan,'' ''home

purchase loan,'' or a ''refinancing'' as defined in § 203.2 of this title.

* * * * *

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

* * * * *

■ 3. Amend § 345.27(g)(1) by removing the term ''paragraph (d)'' and adding in its place the term ''paragraph (e)''.

■ 4. In § 345.41, revise paragraphs (b), (c)(1) and (e)(4) to read as follows:

§ 345.41 Assessment area delineation.

* * * * *

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) * * *

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

* * * * *

(e) * * *

* * * * *

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

* * * * *

■ 5. In § 345.42, revise paragraph (i) to read as follows:

§ 345.42 Data collection, reporting, and disclosure.

* * * * *

(i) *Aggregate disclosure statements.* The FDIC, in conjunction with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the FDIC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

* * * * *

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons discussed in the joint preamble, part 563e of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 563e—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. In § 563e.12:
■ a. Revise paragraph (b)(1);
■ b. Remove paragraph (f);
■ c. Redesignate paragraphs (g), (h), (i), (j), (k), and (l) as paragraphs (f), (g), (h), (i), (j), and (k);
■ d. Revise newly redesignated paragraphs (j) and (k);
■ e. Redesignate paragraphs (m), (n), (o), and (p) as paragraphs (l), (m), (n), and (o);
■ f. Add a new paragraph (p);
■ g. Revise paragraph (q);
■ h. Redesignate paragraphs (r), (s), (t), (u), and (v) as (s), (t), (u), (v), and (w); and
■ i. Add a new paragraph (r) to read as follows:

§ 563e.12 Definitions.

* * * * *

(b) *Area median income means:*

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

* * * * *

(j) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(k) *Home mortgage loan* means a ''home improvement loan,'' ''home purchase loan,'' or a ''refinancing'' as defined in § 203.2 of this title.

* * * * *

(p) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(q) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(r) *Nonmetropolitan area* means any area that is not located in an MSA.

* * * * *

■ 3. Amend § 563e.27(g)(1) by removing the term ''paragraph (d)'' and adding in its place the term ''paragraph (e)''.

■ 4. In § 563e.41, revise paragraphs (b), (c)(1) and (e)(4) to read as follows:

§ 563e.41 Assessment area delineation.

* * * * *

(b) *Geographic area(s) for wholesale or limited purpose savings associations.* The assessment area(s) for a wholesale or limited purpose savings association must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the savings association has its main office, branches, and deposit-taking ATMs.

(c) * * *

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

* * * * *

(e) * * *

* * * * *

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If

a savings association serves a geographic area that extends substantially beyond a state boundary, the savings association shall delineate separate assessment areas for the areas in each state. If a savings association serves a geographic area that extends substantially beyond an MSA boundary, the savings association shall delineate separate assessment areas for the areas inside and outside the MSA.

* * * * *

■ 5. In § 563e.42, revise paragraph (i) to read as follows:

§ 563e.42 Data collection, reporting, and disclosure.

* * * * *

(i) *Aggregate disclosure statements.* The OTS, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OTS may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

* * * * *

Dated: June 21, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 1, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated: June 28, 2004.

By Order of the Board of Directors of the Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: May 24, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–15526 Filed 7–7–04; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–29–AD; Amendment 39–13673; AD 2004–03–34 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2004–03–34 R1 that was published in the **Federal Register** on June 16, 2004 (69 FR 33555). A reference to the amendment number was inadvertently omitted from a heading in the AD. This AD is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires replacing existing screw, nut, and washers that attach the latch cable assembly to the latch block assembly of the door mounted escape slides, with new, improved screw, nut, and washers.

DATES: Effective July 21, 2004.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2004–03–34 R1, amendment 39–13673, applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, was published in the **Federal Register** on June 16, 2004 (69 FR 33555). That AD requires replacing existing screw, nut, and washers that attach the latch cable assembly to the latch block assembly of the door mounted escape slides, with new, improved screw, nut, and washers.

As published, the heading preceding the ''Applicability'' paragraph has a typographical error. That airworthiness directive reads as ''2004–03–34 R1 Boeing: Docket 2004–NM–29–AD. Revises AD 2004–03–34, Amendment 39–13478.'' However, the new amendment number, 39–13673, was inadvertently omitted. That airworthiness directive should have read ''2004–03–34 R1 Boeing: amendment 39–13673. Docket 2004–NM–29–AD. Revises AD 2004–03–34, Amendment 39–13478.''

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains July 21, 2004.

PART 39—AIRWORTHINESS DIRECTIVES

§ 39.13 [Corrected]

■ On page 33556, in the third column, the section preceding the ''Applicability'' paragraph of AD 2004–03–34 R1 is corrected to read as follows:

* * * * *

2004–03–34 R1 Boeing: Amendment 39–13673. Docket 2004–NM–29–AD. Revises AD 2004–03–34, Amendment 39–13478.

* * * * *

Issued in Renton, Washington, on June 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15365 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17616; Airspace Docket No. 04–ASO–6]

Amendment of Class E Airspace; Dayton, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Dayton, TN. As a result of an evaluation, it has been determined a modification should be made to the Dayton, TN, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway 3, Standard Instrument Approach Procedure (SIAP) to Hardwick Field Airport, Cleveland, TN. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On May 19, 2004, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Dayton, TN, (69 FR 28870). This action provides adequate Class E5 airspace for IFR operations at Cleveland, TN, Hardwick Field Airport. Designations for Class E are published in FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Dayton, TN.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Dayton, TN [Revised]

Dayton, Mark Anton Airport, TN
(Lat. 35°29″10′ N, long. 84°55″52′ W)
Hardwick Field Airport
(Lat. 35°13″12′ N, long. 84°55″57′ W)
Hardwick NDB
(Lat. 35°09″13′ N, long. 84°54″21′ W)

Bledsoe County Hospital, Pikeville, TN

Point in Space Coordinates
(Lat. 35°37″34′ N, long. 85°10″38′ W)

Bradley Memorial Hospital, Cleveland, TN

Point in Space Coordinates
(Lat. 35°10″52′ N, long. 84°52″56′ W)

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Mark Anton Airport, and that airspace with a 6.5-mile radius of Hardwich Field Airport and within 3.5 miles northwest and 5.3 miles southeast of the 224° bearing from the HDI NDB extending from the 6.5-mile radius to 10 miles southwest of the NDB, and that airspace with a 6-mile radius of the point in space (lat. 35°″34′ N, long. 85°10″38′ W) serving Bledsoe County Hospital, Pikeville, TN, and that airspace within a 6-mile radius of the point in space (lat. 35°10″52′ N, long. 84°52″56′ W) serving Bradley Memorial Hospital, Cleveland, TN; excluding that airspace within the CHA Class C airspace area and that airspace within the Athens, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, June 23, 2004.

Richard E. Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–15554 Filed 7–7 –04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM04–11–000; Order No. 648]

Revised Fees for Record Requests

Issued June 28, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to provide for the posting of all fees for specialized handling in finding, duplicating, downloading and printing of records generally available to the public at no cost through the Internet. These fees are posted on the Commission's Web site and are updated as required. This revision will eliminate the requirements for section 388.109(a)(4) through section 388.109(a)(6) of the regulations, which identify fees for the reproduction, printing and delivery of specific types of documents, information, media and related services. Eliminating specific fees from the regulations and identifying them on the Commission's Web site will enable the Commission to offer the availability of new and improved technology and methods of delivery as they become available rather than waiting for the regulation review and approval process to be completed.

EFFECTIVE DATE: This final rule is effective immediately upon issuance.

FOR FURTHER INFORMATION CONTACT: Katherina Quijada-Cusack, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8748, *Katherina.Quijada-Cusack@ferc.gov*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly. Revised Fees for Record Requests; Docket No. RM04–11–000, Order No. 648.

Final Rule

Issued June 28, 2004.

I. Introduction

1. The Federal Energy Regulatory Commission is amending section 388.109(a) of its regulations to provide for the posting of all fees for specialized handling in finding, duplicating, downloading and printing records that are generally available to the public at no cost through the Internet. These fees

are posted on the Commission's Web site.

II. Background

2. The Commission makes public documents available for viewing, printing and downloading through the Internet.[1] This is accomplished using a variety of electronic systems. Using the Internet for accessing documents available to the public provides improved functionality, reliability and timeliness to members of the public seeking information about Commission proceedings and other matters.[2] The Commission also makes computer workstations available for use by the public in the Public Reference Room.

3. Documents available electronically are also available to the public in various other media. Since these documents are available to the public at no charge through the Internet, the Commission recovers costs incurred for producing the documents in the various other media formats. These charges are delineated on the Commission's Web site.

III. Discussion

4. Those wishing to access Commission documents available to the public are increasingly using the Internet to gain access to this information. There has been a corresponding increase in the efforts expended by the Commission to make this information available through the Commission's Web site. Much of the historical data contained in the Commission's archives has been converted to electronic images on the Internet and new documents available to the public are being placed on the Internet as they are received. Although all of this information is available to the public at no cost, the Commission wants to ensure that it does not limit access to those who may want or need this information in an alternative format or media. Therefore, the Commission is making these documents and information available at cost in a variety of media and formats. A table of these costs is maintained on the Commission's Web site.

IV. Regulatory Flexibility Act Certification

5. The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[3] The Commission is not required to make such an analysis if a rule would not have such an effect.

6. The Commission does not believe that this rule would have such an impact on small entities. Charges for the specialized handling in finding, duplicating, downloading and printing of records generally available to the public at no cost through the Internet remain modest and the Commission considers it very unlikely that any person or entity would require such a large volume of documents for these charges to have a significant impact.

V. Environmental Statement

7. Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969.[4] Part 380 of the Commission's regulations lists a number of exemptions where an Environmental Analysis or Environmental Impact Statement will not be done. Included are exemptions for procedural, ministerial or internal administrative actions, and for information gathering, analysis and dissemination.[5] This rulemaking is exempt under those provisions.

VI. Information Collection Statement

8. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[6] This Final Rule contains no information reporting requirements, and is not subject to OMB approval.

VII. Document Availability

9. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Web site and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371. User assistance for the Commission's Web site is available during normal business hours from FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

VIII. Effective Date and Congressional Notification

10. This final rule will take effect immediately upon issuance. Pursuant to 5 U.S.C. 804(3)(A), agencies are not required to notify Congress of any final rule that is a rule of particular applicability, including a rule that approves or prescribes rates, services, corporate or financial structures, reorganizations, or accounting practices. The Commission finds that this final rule is covered by the exception. The only impact of this rule is to provide for the posting of all fees for the specialized handling in finding, duplicating, downloading and printing of records generally available to the public at no cost through the Internet. It is therefore a rule of particular applicability prescribing a rate, and the provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply.

11. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public. Therefore, the Commission finds notice and comment procedures to be unnecessary.

12. In addition, because this final rule concerns a matter of agency procedure and is not a substantive rule, the effective date provisions in 5 U.S.C. 553(d)(3) are not applicable, and this final rule therefore is effective immediately upon issuance.

List of Subjects in 18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 388, chapter I, Title 18, of the *Code of Federal Regulations* as follows:

PART 388—INFORMATION AND REQUESTS

■ 1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

■ 2. In § 388.109, revise paragraph (a)(1) and remove paragraphs (a)(4), (5), and (6).

[1] 18 CFR 388.106.

[2] *See* 67 FR 10910 (Mar. 11, 2002).

[3] 5 U.S.C. 601–612.

[4] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,783 (Dec. 10, 1984) (*codified at* 18 CFR Part 380).

[5] 18 CFR 380.4(1) and (5).

[6] 5 CFR Part 1320.

§ 388.109 Fees for record requests.

(a) *Fees for records available through the Public Reference Room—(1) General Rule.* The fee for finding and duplicating records available in the Commission's Public Reference Room will vary depending on the size and complexity of the request. A person can obtain a copy of the schedule of fees in person or by mail from the Public Reference Room. This schedule is also available on the Commission's Web site. Copies of documents also may be made on self-service duplicating machines located in the Public Reference Room. In addition, copies of data extracted from the Commission's files through electronic media are available on a reimbursable basis, upon written request to the Public Reference Room.

* * * * *

[FR Doc. 04–15453 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9135]

RIN 1545–BB44

Rents and Royalties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the inclusion in gross income of advance rentals. The regulations authorize the Commissioner to provide rules allowing for the inclusion of advance rentals in gross income in a year other than the year of receipt. The regulations will affect taxpayers that receive advance payments for the use of certain items (such as intellectual property and computer software) to be designated by the Commissioner.

DATES: *Effective Date:* These regulations are effective July 8, 2004.

Applicability Date: The amendments made by these regulations apply after December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Edwin B. Cleverdon, (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 18, 2002, the IRS published a notice of proposed rulemaking (REG–151043–02) in the **Federal Register** (67 FR 77450), proposing amendments to 26 CFR part 1 under section 61 of the Internal Revenue Code (Code) regarding the inclusion in gross income of advance rentals. The notice of proposed rulemaking invited comments and requests for a public hearing, but no comments were received and no public hearing was requested or held.

Contemporaneously with the publication of the notice of proposed rulemaking, the IRS published a proposed revenue procedure in Notice 2002–79 (2002–2 C.B. 964) that, when final, implements the amendments made by these final regulations. The proposed revenue procedure was finalized, with modifications, as Rev. Proc. 2004–34 (2004–22 I.R.B. 991). Comments received in connection with the proposed revenue procedure, including comments concerning the proposed treatment of advance rentals, are addressed in Announcement 2004–48 (2004–22 I.R.B. 998), which accompanies Rev. Proc. 2004–34.

Explanation of Provisions

This document contains amendments to 26 CFR part 1 relating to the inclusion in gross income of advance rentals under section 61 of the Code. Prior to amendment, § 1.61–8(b) provided that, except as provided in section 467 and the regulations thereunder, advance rentals must be included in gross income in the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. The amendments authorize the Commissioner to provide, through administrative guidance, rules for deferring income inclusion of advance rentals to a taxable year other than the year of receipt. This amendment ensures that the Commissioner, in modifying Rev. Proc. 71–21 (1971–2 C.B. 549), may provide deferral rules for the use of intellectual property and computer software.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments on the regulations.

Drafting Information

The principal author of these regulations is Edwin B. Cleverdon of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.61–8 [Amended]

■ **Par. 2.** The first sentence of § 1.61–8(b) is amended by adding the language ''and except as otherwise provided by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter),'' immediately after ''thereunder,''.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–15543 Filed 7–7–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 157 and 602

[TD 9134]

RIN 1545–BB14

Excise Tax Relating to Structured Settlement Factoring Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the manner and method of reporting and paying the nondeductible 40 percent excise tax

imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction. The regulations provide the guidance necessary to comply with the reporting requirements of the excise tax.

DATES: *Effective Date:* These regulations are effective July 8, 2004.

Applicability Dates: For dates of applicability, see § 157.5891–1(e).

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz of the Office of Associate Chief Counsel (Income Tax and Accounting) at 202–622–4920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1824. The collections of information in these final regulations are in §§ 157.6001–1, 157.6011–1, 157.6081–1, and 157.6161–1. This information is required by the IRS to verify that the excise tax imposed under section 5891 is properly reported on Form 8876 and timely paid. This information will be used for that purpose.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden is reflected in the burden estimate on Form 8876. Suggestions for reducing the burden of the collection of information in these regulations should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations that replace the temporary regulations in 26 CFR part 157. The regulations provide guidance on the proper manner and method of reporting and paying the 40 percent excise tax imposed under section 5891. The regulations reflect the addition to the Internal Revenue Code (Code) of chapter 55 and section 5891 by section 115 of the Victims of Terrorism Tax Relief Act of 2001, Pub. L. 107–134, (115 Stat. 2427, 2436–2439). On February 19, 2003, temporary regulations (TD 9042) adding a new part 157, Excise Tax on Structured Settlement Factoring Transactions, to title 26 of the Code of Federal Regulations were published in the **Federal Register** (68 FR 7922). A notice of proposed rulemaking (REG–139768–02) cross-referencing the temporary regulations was also published in the **Federal Register** (68 FR 7956). No public hearing was requested or held. One written comment responding to the notice of proposed rulemaking was received in which the writer commended the issuance of the temporary and proposed regulations and urged that they be finalized without change. The proposed regulations are adopted by this Treasury decision without any substantive changes.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5), does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the expectation that the excise tax imposed by section 5891 will apply to few structured settlement factoring transactions. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these final regulations is Shareen S. Pflanz, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 157

Excise taxes, Structured settlement factoring transactions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, title 26 CFR parts 157 and 602 are amended as follows:

■ **Paragraph 1.** Part 157 is revised to read as follows:

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Subpart A—Tax on Structured Settlement Factoring Transactions

Sec.

Subpart B—Procedure and Administration

Authority: 26 U.S.C. 7805.

157.6001–1 also issued under 26 U.S.C. 6001.
157.6011–1 also issued under 26 U.S.C. 6011.
157.6061–1 also issued under 26 U.S.C. 6061.
157.6071–1 also issued under 26 U.S.C. 6071.
157.6091–1 also issued under 26 U.S.C. 6091.
Section 157.6161–1 also issued under 26 U.S.C. 6161.

Subpart A—Tax on Structured Settlement Factoring Transactions

§ 157.5891–1 Imposition of excise tax on structured settlement factoring transactions.

(a) *In general.* Section 5891 imposes on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring

discount with respect to such factoring transaction.

(b) *Exceptions for certain approved transactions*—(1) *In general.* The excise tax shall not apply to a structured settlement factoring transaction if the transfer of structured settlement payment rights is approved in advance in a qualified order.

(2) *Qualified order dispositive.* A qualified order shall be treated as dispositive for purposes of this exception.

(c) *Definitions*—(1) *Applicable state statute* means—

(i) A statute that is enacted by the state in which the payee of the structured settlement is domiciled and provides for the entry of an order, judgment, or decree described in paragraph (c)(4)(i) of this section; or

(ii) If there is no such statute, a statute that—

(A) Is enacted by the state in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business; and

(B) Provides for the entry of such an order, judgment, or decree.

(2) *Applicable state court* means, with respect to any applicable state statute, a court of the state that enacted such statute. If the payee of the structured settlement is not domiciled in the state that enacted the statute, the term also includes a court of the state in which the payee is domiciled.

(3) *Factoring discount* means an amount equal to the excess of—

(i) The aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction; over

(ii) The total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(4) *Qualified order* means a final order, judgment, or decree that—

(i) Finds that the transfer of structured settlement payment rights does not contravene any Federal or state statute, or the order of any court or responsible administrative authority, and is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and

(ii) Is issued under the authority of an applicable state statute by an applicable state court, or is issued by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(5) *Responsible administrative authority* means the administrative authority that had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.

(6) *State* includes the Commonwealth of Puerto Rico and any possession of the United States.

(7) *Structured settlement* means an arrangement—

(i) That is established by—

(A) Suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2); or

(B) Agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1); and

(ii) Under which the periodic payments are—

(A) Of the character described in section 130(c)(2)(A) and (B); and

(B) Payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(8) *Structured settlement factoring transaction* means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration other than—

(i) The creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights; or

(ii) A subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(9) *Structured settlement payment rights* means rights to receive payments under a structured settlement.

(d) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general.* If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) *No withholding of tax.* The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(e) *Effective dates.* This section applies to structured settlement factoring transactions entered into on or after July 8, 2004. For structured settlement factoring transactions entered into before July 8, 2004, *see* § 157.5891–1T of this chapter (2003–1 C.B. 564. *See* § 601.601(d)(2) of this chapter.), as it appeared in the April 1, 2003, edition of 26 CFR part 157.

Subpart B—Procedure and Administration

§ 157.6001–1 Records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code must keep such complete and detailed records as are sufficient to enable the Internal Revenue Service (IRS) to determine accurately the amount of liability under chapter 55.

(b) *Notice by the IRS requiring returns, statements, or the keeping of records.* The IRS may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the IRS to determine whether or not the person is liable for tax under chapter 55.

(c) *Retention of records.* The records required by this section must be kept at all times available for inspection by the IRS, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§ 157.6011–1 General requirement of return, statement, or list.

Every person liable for tax under section 5891 must file a return with respect to the tax in accordance with the forms and instructions provided by the Internal Revenue Service.

§ 157.6061–1 Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue

Code or the regulations under chapter 55 must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

§ 157.6065–1 Verification of returns.

If a return, statement, or other document made under the provisions of chapter 55 (Structured Settlement Factoring Transactions) or of subtitle F of the Internal Revenue Code, or the regulations under those provisions with respect to any tax imposed by chapter 55, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 55 or subtitle F, or the regulations under those provisions, with respect to any tax imposed by chapter 55 may be required to contain or be verified by written declaration that it is made under the penalties of perjury.

§ 157.6071–1 Time for filing returns.

(a) *In general.* Except as provided in paragraph (b) of this section, returns required by § 157.6011–1 (relating to returns of tax with respect to structured settlement factoring transactions) must be filed on or before the ninetieth day following the receipt of structured settlement payment rights in a structured settlement factoring transaction.

(b) *Returns relating to structured settlement payment rights received before February 19, 2003.* Returns required by § 157.6011–1 that relate to structured settlement payment rights received on or before February 19, 2003, must be filed on or before May 20, 2003.

§ 157.6081–1 Extension of time for filing the return.

(a) *Application for extension.* An application for an extension of time for filing the return required by § 157.6011–1 (relating to returns of tax with respect to structured settlement factoring transactions) must be completed in accordance with the forms and instructions provided by the Internal Revenue Service. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of the extension.

(b) *Filing of return.* If an extension of time for filing the return is granted, a return must be filed before the period of extension expires.

§ 157.6091–1 Place for filing returns.

The return required by § 157.6011–1 (relating to returns of tax with respect to structured settlement factoring transactions) must be filed at the place specified in the forms and instructions provided by the Internal Revenue Service.

§ 157.6151–1 Time and place for paying of tax shown on returns.

The tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code shown on any return must, without assessment or notice and demand, be paid at the time and place specified in the forms and instructions provided by the Internal Revenue Service. For provisions relating to the time and place for filing such return, see § 157.6071–1 and § 157.6091–1. For provisions relating to the extension of time for paying the tax, see § 157.6161–1.

§ 157.6161–1 Extension of time for paying tax.

(a) *In general*—(1) *Tax shown or required to be shown on return.* The Internal Revenue Service may, at the request of the taxpayer, grant a reasonable extension of time for payment of the amount of any tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code and shown or required to be shown on any return. The period of such extension shall not exceed 6 months from the date fixed for payment of such tax, except that in the case of a taxpayer that is abroad, such extension may exceed 6 months.

(2) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extension of time for paying income tax to apply.* The provisions of § 1.6161–1(b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 55 of the Code.

§ 157.6165–1 Bonds where time to pay tax has been extended.

If an extension of time for payment is granted under section 6161, the Internal Revenue Service may, if it deems necessary, require a bond for the payment, in accordance with the terms of the extension, of the amount with respect to which the extension is granted. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to the form of bonds, see the regulations under section 7101 contained in part 301 (Regulations on Procedure and Administration) of this chapter.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 2.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 3.** In § 602.101, paragraph (b) is amended by removing the entries for ''157.6001–1T,'' ''157.6011–1T,'' ''157.6081–1T,'' and ''157.6161–1T'' and adding entries in numerical order to the table to read, in part, as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section identified and described	Current OMB control No.
* * * * *	
157.6001–1	1545–1824
157.6011–1	1545–1824
157.6081–1	1545–1824
157.6161–1	1545–1824
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: June 23, 2004.

Gregory Jenner,

Acting, Assistant Secretary of the Treasury.

[FR Doc. 04–15124 Filed 7–7–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[CGD 13–04–029]

RIN 1625–AA08 and 1625–AA00

Special Local Regulation (SLR) and Safety Zone Regulations: Notice of Implementation for Seattle Seafair Unlimited Hydroplane Race and Blue Angels Air Show Performance 2004, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulations.

SUMMARY: The Coast Guard announces enforcement periods for Seattle Seafair Unlimited Hydroplane Race Special Local Regulation (SLR) as per 33 CFR 100.1301 and Seafair Blue Angels Air Show Performance Safety Zone Regulation as per 33 CFR 165.1319. This year's events will be held on Wednesday, August 4, 2004, through Sunday, August 8, 2004.

DATES: 33 CFR 100.1301 and 33 CFR 165.1319 will be enforced from 8:30 a.m. to 4 p.m. Pacific daylight time each day August 4th, 5th, 6th, 7th, and 8th 2004.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Puget Sound, at (206) 217–6232.

Dated: June 28, 2004.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–15560 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–022]

RIN 1625–AA09

Drawbridge Operation Regulations; White River, Clarendon, AR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the St. Louis Southwestern Railroad Drawbridge, across the White River, mile 98.9 at Clarendon, Arkansas. This deviation allows the drawbridge to remain closed to navigation for 8 days from 6 a.m., August 15, 2004, until 6 p.m., August 22, 2004, Central Standard Time. The deviation is necessary to facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 6 a.m., August 15, 2004, through 6 p.m., August 22, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad requested a temporary deviation on May 14, 2004, to allow time to conduct preventative maintenance to the St. Louis Southwestern Railroad Drawbridge, across the White River, mile 98.9 at Clarendon, Arkansas. The St. Louis Southwestern Railroad Drawbridge currently operates in accordance with 33 CFR 117.139 which requires the drawbridge to open on signal for passage of vessel traffic if at least eight hours notice is given. In order to repair machinery, the bridge must be kept in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for 8 days from 6 a.m., August 15, 2004 until 6 p.m., August 22, 2004. There are no alternate routes for vessels transiting through mile 98.9 on the White River. The drawbridge will be incapable of opening for emergencies during the 8-day repair period.

The St. Louis Southwestern Drawbridge provides a vertical clearance of 35 feet above pool stage in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 30, 2004.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 04–15561 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–102]

RIN 1625–AA00

Safety Zones; Coast Guard Activities New York Fireworks Displays

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing five permanent safety zones for fireworks displays located in Pierhead Channel, NJ; Lower New York Bay; Raritan Bay; Long Island Sound; the Hudson River; and revise the section title. This action is necessary to protect the life and property of the maritime public from the hazards posed by these events. Entry into or movement within these zones during the enforcement periods is prohibited without approval of the Captain of the Port (COTP), New York.

DATES: This rule is effective as of August 9, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–03–102) and are available for inspection or copying at the Waterways Oversight Branch, room 203, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 27, 2004, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Coast Guard Activities New York Fireworks Displays in the **Federal Register** 69 FR 22753. We received no letters commenting on the

proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing five permanent safety zones that will be enforced for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these five locations. The five locations are in Pierhead Channel, NJ, north of the Kill Van Kull Channel; Lower New York Bay, southeast of Midland Beach; Raritan Bay east of Wolfes Pond Park; Long Island Sound, east of Orchard Beach; and the Hudson River, east of Newburgh, NY. The Coast Guard received 14 applications for fireworks displays in these new areas between June and September 2003. There were no fireworks displays at these sites in calendar year 2000. A temporary safety zone was established for each display with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing five permanent safety zones by notice and comment rulemaking provided the public the opportunity to comment on the zone locations, size, and length of time the zones will be active. The Coast Guard has not received notice of any impact to waterway traffic resulting from the enforcement of the zones. Marine traffic will still be able to pass safely around the safety zones because the zone prohibits vessels from entering only the actual zone. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the safety zones.

This rule amends 33 CFR 165.168 by adding five permanent safety zones to the 34 existing ones and revises the section's title to identify the Coast Guard Captain of the Port zone where the safety zones are located instead of listing all affected waterways.

We also removed the four figures in the regulation showing the overview of the safety zone locations. These are available in the ''USCG Notices'' section online at: *http://www.harborops.com*. Mariners are also able to plot these positions on their own navigation charts.

This rule, and the current effective safety zones in 33 CFR 165.168, are for fireworks displays using 12″ shells. We will enforce a smaller safety zone for displays in these locations that use fireworks shells smaller than 12''. However, the boundary will still be located within the listed safety zone boundary of this regulation for fireworks displays using shells smaller than 12″. The five safety zones are:

Pierhead Channel, NJ Safety Zone

The safety zone includes all waters of Pierhead Channel and the Kill Van Kull within a 360-yard radius of the fireworks barge in approximate position 40°39′18.8″ N, 074°04′39.1″ W (NAD 1983), about 315 yards north of the Kill Van Kull Channel. The safety zone prevents vessels from transiting a portion of Pierhead Channel and the Kill Van Kull and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely through the eastern 175 yards of the 460-yard wide Pierhead Channel, and the southern 360 yards of the 400-yard wide Kill Van Kull.

Midland Beach, Staten Island Safety Zone

The safety zone includes all waters of Lower New York Bay within a 500-yard radius of the fireworks barge in approximate position 40°34′12.0″ N, 074°04′29.6″ W (NAD 1983), about 800 yards southeast of Midland Beach. The safety zone prevents vessels from transiting a portion of Lower New York Bay and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely around the safety zone. The size of this zone is 500 yards to allow for the vessels involved to be closer to shore if the Tides and Currents are favorable the night of the display. The size of the zone to be enforced during any fireworks display will be within 360-yards of the fireworks barge. This 360-yard safety zone will be wholly contained within this 500-yard safety zone.

Wolfes Pond Park, Staten Island Safety Zone

The safety zone includes all waters of Raritan Bay within a 500 yard radius of the fireworks barge in approximate position 40°30′52.1″ N 074°10′58.8″ W (NAD 1983), about 540 yards east of Wolfes Pond Park. The safety zone prevents vessels from transiting a portion of Raritan Bay and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely around the safety zone. The size of this zone is 500 yards to allow for the vessels involved to be closer to shore if the Tides and Currents are favorable the night of the display. The size of the zone to be enforced during any fireworks display will be within 360-yards of the fireworks barge. This 360-yard safety zone will be wholly contained within this 500-yard safety zone.

Orchard Beach, The Bronx, Safety Zone

The safety zone includes all waters of Long Island Sound in an area bound by the following points: 40°51′43.5″ N 073°47′36.3″ W; thence to 40°52′12.2″ N 073°47′13.6″ W; thence to 40°52′02.5″ N 073°46′47.8″ W; thence to 40°51′32.3″ N 073°47′09.9″ W (NAD 1983), thence to the point of origin. The safety zone prevents vessels from transiting a portion of Long Island Sound and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely around the safety zone. This safety zone is shaped like a block to allow the sponsor the flexibility to use one or two barges per display.

Newburgh, NY, Safety Zone

The safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 41°30′01.2″ N 073°59′42.5″ W (NAD 1983), about 930 yards east of Newburgh, NY. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely around the safety zone.

The size of these safety zones was determined using National Fire Protection Association and New York City Fire Department standards for 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area. Barge locations and mortar sizes were adjusted to try and ensure the safety zone locations do not interfere with any known marinas or piers.

The Coast Guard does not know the actual dates that these safety zones will be enforced at this time. Coast Guard Activities New York will give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners, electronic mail distribution, and on the Internet at *http://www.harborops.com*. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. The Coast Guard expects that the notice of the enforcement of each permanent safety zone in this

rulemaking will normally be made between thirty and twenty one days before the zone is actually enforced. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled ''FIREWORKS—STAY AWAY''. This will provide on-scene notice that the safety zone is or will be enforced on that day. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce the safety zone.

The enforcement period for these safety zones is from 6 p.m. to 1 a.m. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the short amount of time that vessels will be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels may still transit through all Traffic Lanes to, and from, the Port of New York/New Jersey. Vessels may also still transit through Pierhead Channel, the Kill Van Kull, Lower New York Bay, Raritan Bay, western Long Island Sound, and the Hudson River during these events. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zones. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners, electronic mail distribution, and in the ''USCG Notices'' section on the Internet at *http://www.harborops.com*. Marine information and facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that these safety zones will only be enforced 18–20 times per year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Pierhead Channel, the Kill Van Kull, Lower New York Bay, Raritan Bay, western Long Island Sound, and the Hudson River, during the times these zones are enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the safety zones. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present. Before the effective period, we will issue maritime advisories widely available to users of the Port of New York/New Jersey by Local Notice to Mariners, electronic mail distribution, and in the ''USCG Notices'' section on the Internet at *http://www.harborops.com*. Marine information and facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.168—
■ a. Revise the section heading;
■ b. Revise paragraph (a) introductory text and add paragraphs (a)(10), (a)(11) and (a)(12);
■ c. Revise paragraph (b) introductory text and add paragraph (b)(11);
■ d. Revise paragraph (c) introductory text;
■ e. Revise paragraph (d) introductory text, and add paragraph (d)(12);
■ f. In paragraph (f), remove the word ''Effective'' from the paragraph heading and add in its place the word ''Enforcement'' and in the first sentence of the paragraph remove the words ''is effective'' and add in their place the words ''will be enforced''; and
■ g. Remove figures 1 through 4 at the end of the section.

The revisions, removals, and additions read as follows:

§ 165.168 Safety Zones; Coast Guard Activities New York Fireworks Displays.

(a) *New York Harbor.* The following areas are safety zones:

* * * * *

(10) *Pierhead Channel, NJ Safety Zone:* All waters of Pierhead Channel and the Kill Van Kull within a 360-yard radius of the fireworks barge in approximate position 40°39′18.8″ N 074°04′39.1″ W (NAD 1983), approximately 315 yards north of the Kill Van Kull Channel.

(11) *Midland Beach, Staten Island Safety Zone:* All waters of Lower New York Bay within a 500-yard radius of the fireworks barge in approximate position 40°34′12.0″ N 074°04′29.6″ W (NAD 1983), approximately 800 yards southeast of Midland Beach.

(12) *Wolfes Pond Park, Staten Island Safety Zone:* All waters of Raritan Bay within a 500-yard radius of the fireworks barge in approximate position 40°30′52.1″ N 074°10′58.8″ W (NAD 1983), approximately 540 yards east of Wolfes Pond Park.

(b) *Western Long Island Sound.* The following areas are safety zones:

* * * * *

(11) *Orchard Beach, The Bronx, Safety Zone:* All waters of Long Island Sound in an area bound by the following points: 40°51′43.5″ N 073°47′36.3″ W; thence to 40°52′12.2″ N 073°47′13.6″ W; thence to 40°52′02.5″ N 073°46′47.8″ W; thence to 40°51′32.3″ N 073°47′09.9″ W (NAD 1983), thence to the point of origin.

(c) *East River.* The following areas are safety zones:

* * * * *

(d) *Hudson River.* The following areas are safety zones:

* * * * *

(12) *Newburgh, NY, Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 41°30′01.2″ N 073°59′42.5″ W (NAD 1983), approximately 930 yards east of Newburgh, NY.

* * * * *

Dated: June 29, 2004.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 04–15559 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1890–AA09

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends regulations governing the process for submitting discretionary grant applications by removing current provisions requiring specific application formats, thereby permitting electronic submission of applications. The revisions also clarify that only applicants submitting paper applications are required to submit one original and two copies of their application to the Department of Education (Department).

DATES: These regulations are effective August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Kevin Taylor, U.S. Department of Education, 400 Maryland Avenue, SW., room 7089, PCP, Washington, DC 20202–4248. Telephone: (202) 245–6143, or via Internet: *Kevin.Taylor@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On October 30, 2003, the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the **Federal Register** (68 FR 61780) in which the Secretary explained that the Department was proposing to amend its regulations to allow grant applications to be sent electronically via the Internet. This final rulemaking document fulfills the Secretary's proposal to remove the requirement that an application be mailed or hand-delivered. Under the final rule, the Department can receive applications electronically without using the pilot program as the authority for receiving electronic grant applications. As an added benefit, the changes to the regulations also increase the Department's flexibility to participate in new government-wide electronic grant initiatives.

There are no differences between the NPRM and these final regulations, other than a minor editorial change.

Under the new rule, the Department will inform applicants in the application notice whether the option to apply for a grant electronically is available or required for a particular grant program competition. This information will be restated in the application package's transmittal instructions. The application notice will include all the other information necessary to apply for a grant, including the deadline date and time for electronic and paper application.

Analysis of Comments

In response to the Secretary's invitation in the NPRM, three parties submitted comments on the proposed regulations. An analysis of the comments follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make.

Two commenters strongly supported the proposed changes to the regulations that would permit the Department to use the Internet to accept grant applications electronically. One of the supportive commenters did not address any particular proposed requirement other than to say generally that the proposed rule was a good idea. One commenter disagreed with the proposed change.

Section 75.109 Deadline Date for Applications

Comment: One supporter of the changes recommended that we amend the regulations to state specifically the two application options that are available to apply for a grant rather than taking the application methods out of the regulations. For example, the regulation would specify that an applicant could either use electronic means or submit a paper application and deliver it by mail, commercial delivery, or courier to the Department.

Discussion: The Department believes that potential grant applicants will have adequate opportunity to receive information about the application formats that will be used for a particular grant program competition when the Department publishes an application notice in the **Federal Register**. The Secretary believes that using the application notice to convey information regarding a grant competition's application requirements is a more effective way to convey information to prospective applicants. Application notices will contain detailed information on the application process and specific requirements for a particular grant program competition.

We believe that the new approach of removing the specific application formats from the regulations and relocating the information to the application notice will not hinder potential applicants' ability to learn what application methods are available to them for a grant competition.

Changes: None.

Comment: Another commenter criticized the change because it would prevent some applicants from applying for a grant, especially certain rural and inner-city school districts, and faith-based organizations that might not have the technical resources or staff to be able to apply for a grant online.

Discussion: The Department realizes that there are potential applicants that do not have adequate computer equipment to gain access to the Internet and, even if the potential applicant had sufficient computer equipment, telecommunications charges for access to the Internet from some isolated areas might be prohibitively expensive. To address this concern, the Secretary will continue to allow applicants to submit a paper application in lieu of an electronic version. Furthermore, in grant competitions requiring mandatory submission of electronic applications, the Secretary will permit applicants to request a waiver from the mandatory electronic submission requirement. A waiver will allow applicants to submit a paper application if they are unable to submit their application electronically. For those programs that require electronic submission of applications, the application notice will include instructions on how an applicant can request a waiver to submit a paper application.

The Department has also taken steps to assist applicants during the transition from a paper-based application process to an electronic one. Applicants interested in submitting a grant application electronically can obtain assistance in several ways. Prospective applicants can access the Department's e-Grants home page (*http://e-grants.ed.gov*) where they can view an online demonstration on how to submit an application electronically via e-Application. Additionally, the Department has established a help desk, which applicants can contact for technical support. There is also an online e-Application User's Guide to assist applicants in all phases of the electronic application process.

Changes: None.

Executive Order 12866

Under Executive Order 12866 we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering the Department's programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (68 FR 61781). The cost to an applicant of submitting an electronic application is significantly less than the cost of submitting a paper application. Thus, the final rule will reduce applicant costs dramatically. The costs to applicants and the Department of maintaining the data included in the applications is also significantly reduced under the final rule. The benefits of the rule are also significant, permitting easy means for applicants to apply and giving applicants more time to prepare their application because electronic submission eliminates the delay caused by mailing an application.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations affect direct grant programs that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: July 1, 2004.

Rod Paige,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 75 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C 1221e–3 and 3474, unless otherwise noted.

■ 2. Section 75.102 is amended by revising paragraphs (a) and (b), and the introductory text in paragraph (d) to read as follows:

§ 75.102 Deadline date for applications.

(a) The application notice for a program sets a deadline date for the transmittal of applications to the Department.

(b) If an applicant wants a new grant, the applicant must submit an application in accordance with the requirements in the application notice.

* * * * *

(d) If the Secretary allows an applicant to submit a paper application, the applicant must show one of the following as proof of mailing by the deadline date:

* * * * *

■ 3. Section 75.109 is amended by revising paragraph (a) to read as follows:

§ 75.109 Changes to application; number of copies.

(a) Each applicant that submits a paper application shall submit an original and two copies to the Department, including any information that the applicant supplies voluntarily.

* * * * *

[FR Doc. 04–15473 Filed 7–7–04; 8:45 am]

BILLING CODE 4000–01–P

Proposed Rules

Federal Register
Vol. 69, No. 130
Thursday, July 8, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chap. VII

Request for Burden Reduction Recommendation; Consumer Protection: Share Account—Deposit Relationships and Miscellaneous Consumer Regulations; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The NCUA Board is continuing its review of its regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on federally-insured credit unions pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Today, NCUA requests comments and suggestions on ways to reduce burden in rules we have categorized as Consumer Protection: Share Account—Deposit Relationships and Miscellaneous Consumer Regulations, consistent with our statutory obligations. All comments are welcome.

We specifically invite comment on the following issues: Whether statutory changes are needed; whether the regulations contain requirements that are not needed to serve the purposes of the statutes they implement; the extent to which the regulations may adversely affect competition; the cost of compliance associated with reporting, recordkeeping, and disclosure requirements, particularly on small credit unions; whether any regulatory requirements are inconsistent or redundant; and whether any regulations are unclear.

We will analyze the comments received and propose burden reducing changes to our regulations where appropriate. Some suggestions for burden reduction might require legislative changes. Where legislative changes would be required, we will consider the suggestions in recommending appropriate changes to Congress.

DATES: Comment must be received on or before October 6, 2004.

ADDRESSES: You may submit comments by any of the following methods (please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web Site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html.* Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Third EGRPRA Notice'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6562.

SUPPLEMENTARY INFORMATION:

I. Introduction

NCUA seeks public comment and suggestions on ways it can reduce regulatory burdens consistent with our statutory obligations. Today, we request input to help us identify which requirements in the category Consumer Protection: Share Account—Deposit Relationships and Miscellaneous Consumer Regulations are outdated, unnecessary, or unduly burdensome. The rules in this category are listed in a chart at the end of this notice. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.

In drafting this notice, the NCUA participated as part of the EGRPRA planning process with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (Agencies). Because of the unique circumstances of federally-insured credit unions and their members, NCUA is issuing a separate notice from the four bank regulatory agencies, which are issuing a joint notice. NCUA's notice is consistent and comparable with the joint notice, except on issues that are unique to credit unions.

This category of rules includes Regulation E, Electronic Fund Transfers, 12 CFR part 205, which is issued by the Board of Governors of the Federal Reserve System (Federal Reserve). The NCUA has administrative enforcement authority for Regulation E for federal credit unions and the Federal Trade Commission has administrative enforcement authority for federally insured state credit unions. Regulation E is included in the joint notice in which the Federal Reserve is participating. Credit unions and other interested parties seeking to comment on this rule may either submit comments to the NCUA or the EGRPRA Web site, at *http://www.EGRPRA.gov,* as specified in the joint notice. Commenters may address any aspect of the regulation, including specifically how the regulation uniquely affects credit unions.

II. The EGRPRA Review Requirements and NCUA's Proposed Plan

This notice is part of the regulatory review required by section 2222 of EGRPRA.[1] The NCUA described the review requirements in our initial **Federal Register** notice, published on July 3, 2003 (68 FR 39863). As we noted at that time, we anticipate that the EGRPRA review's overall focus on the ''forest'' of regulations will offer a new perspective in identifying opportunities to reduce regulatory burden. We must, of course, assure that the effort to reduce regulatory burden is consistent with applicable statutory mandates and provides for the continued safety and soundness of federally-insured credit unions and appropriate consumer protections.

The EGRPRA review required that NCUA categorize our regulations by type. Our July 3, 2003, **Federal Register** publication identified ten broad categories for our regulations.

The categories are:

[1] Pub. Law 104–208, div. A, title II, § 2222, 110 Stat. 3009–414; codified at 12 U.S.C. 3311.

1. Applications and Reporting.
2. Powers and Activities.
3. Agency Programs.
4. Capital.
5. Consumer Protection.
6. Corporate Credit Unions.
7. Directors, Officers and Employees.
8. Money Laundering.
9. Rules of Procedure.
10. Safety and Soundness.

To spread the work of commenting on and reviewing the categories of rules over a reasonable period of time, we proposed to publish one or more categories of rules approximately every six months between 2003 and 2006 and provide a 90-day comment period for each publication. We asked for comment on all aspects of our plan, including: the categories, the rules in each category, and the order in which we should review the categories. Because the NCUA was eager to begin reducing unnecessary burden where appropriate, our initial notice also published the first two categories of rules for comment (Applications and Reporting and Powers and Activities). NCUA published its second notice, soliciting comment on consumer protection rules in the lending area, on February 4, 2004 (69 FR 5300). All our covered categories of rules must be published for comment and reviewed by the end of September 2006.

The EGRPRA review then requires the Agencies to: (1) Publish a summary of the comments we received, identifying and discussing the significant issues raised in them; and (2) eliminate unnecessary regulatory requirements. Within 30 days after the Agencies publish the comment summary and discussion, the Federal Financial Institutions Examination Council, which is an interagency body to which all of the Agencies belong, must submit a report to Congress. This report will summarize significant issues raised by the public comments and the relative merits of those issues. It will also analyze whether the appropriate Federal financial institution regulatory agency can address the burdens by regulation, or whether the burdens must be addressed by legislation.

Public Response and NCUA's Current Plan

NCUA received eight comments in response to its first notice, and four comments in response to its second notice. The comments have been posted on the interagency EGRPRA Web site, *http://www.EGRPRA.gov,* and can be viewed by clicking on ''Comments.''

We are actively reviewing the feedback received about specific ways to reduce regulatory burden, as well as conducting our own analyses. Because the main purpose of this notice is to request comment on the next category of regulations, we will not discuss specific recommendations that we have received in response to our earlier notices here. However, as we develop initiatives to reduce burden on specific subjects in the future—whether through regulatory, legislative, or other channels—we will discuss the public's recommendations that relate to our proposed actions.

In our last notice, we discussed how, in response to specific suggestions, both NCUA and the bank regulatory agencies divided the consumer protection regulations into two categories: (1) Lending-Related Rules, and (2) Share Account—Deposit Relationships and Miscellaneous Consumer Rules. As we had indicated then, some industry representatives have stated that the requirements imposed by the Consumer Protection regulations are among the most burdensome. This notice is devoted to consideration of regulations in the Share Account—Deposit Relationships and Miscellaneous Consumer Rules category.

III. Request for Comment on Consumer Protection: Share Account—Deposit Relationships and Miscellaneous Consumer Rules Category

NCUA is asking the public to identify the ways in which the rules in the category of non-lending related consumer protection may be outdated, unnecessary, or unduly burdensome. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change. The rules in this category are listed in the chart below.

We encourage comments that not only deal with individual rules or requirements but also pertain to certain product lines. For example, in the case of a particular type of share account, are any disclosure requirements under one regulation inconsistent with or duplicative of requirements under another regulation? Are there unnecessary records that must be kept? A product line approach is consistent with EGRPRA's focus on how rules interact, and may be especially helpful in exposing redundant or potentially inconsistent regulatory requirements. We recognize that commenters using a product line approach may want to make recommendations about rules that are not in our current request for comment. They should do so since the EGRPRA categories are designed to stimulate creative approaches rather than limiting them.

Specific issues to consider. While all comments are welcome, NCUA specifically invites comment on the following issues:

- *Need for statutory change.* Do any of the statutory requirements underlying these regulations impose redundant, conflicting or otherwise unduly burdensome requirements? Are there less burdensome alternatives?
- *Need and purpose of the regulations.* Are the regulations consistent with the purposes of the statutes that they implement? Have circumstances changed so that the regulation is no longer necessary? Do changes in the financial products and services offered to consumers suggest a need to revise certain regulations or statutes? Do any of the regulations impose compliance burdens not required by the statutes they implement?
- *General approach/flexibility.* Generally, is there a different approach to regulating that NCUA could use that would achieve statutory goals while imposing less burden? Do any of the regulations in this category or the statutes underlying them impose unnecessarily inflexible requirements?
- *Effect of the regulations on competition.* Do any of the regulations in this category or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry?
- *Reporting, recordkeeping and disclosure requirements.* Do any of the regulations in this category or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? What, if any, of these requirements could be fulfilled electronically to reduce their burden? Are any of the reporting or recordkeeping requirements unnecessary to demonstrate compliance with the law?
- *Consistency and redundancy.* Do any of the regulations in this category impose inconsistent or redundant regulatory requirements that are not warranted by the purposes of the regulation?
- *Clarity.* Are the regulations in this category drafted in clear and easily understood language?
- *Burden on small insured institutions.* NCUA has a particular interest in minimizing burden on small insured credit unions (those with less than $10 million in assets). More than half of federally-insured credit unions

are small—having $10 million in assets or less—as defined by NCUA in Interpretative Ruling and Policy Statement 03–2, Developing and Reviewing Government Regulations. NCUA solicits comment on how any regulations in this category could be changed to minimize any significant economic impact on a substantial number of small credit unions.

NCUA appreciates the efforts of all interested parties to help us eliminate outdated, unnecessary or unduly burdensome regulatory requirements.

IV. Regulations About Which Burden Reduction Recommendations Are Requested Currently

CONSUMER PROTECTION: SHARE ACCOUNT—DEPOSIT RELATIONSHIPS AND MISCELLANEOUS CONSUMER RULES

Subject	Code of Federal Regulations (CFR) citation
Truth in Savings	12 CFR Part 707.
Privacy of Consumer Financial Information	12 CFR Part 716.
Accuracy of Advertising and Notice of Insured Status	12 CFR Part 740.
Notice of Termination of Excess Insurance Coverage	12 CFR 741.5.
Uninsured Membership Shares	12 CFR 741.9.
Disclosure of Share Insurance	12 CFR 741.10.
Share Insurance	12 CFR Part 745.
Electronic Fund Transfers (Regulation E—Federal Reserve)	12 CFR Part 205.

By the National Credit Union Administration Board on June 30, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–15470 Filed 7–7–04; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18561; Directorate Identifier 2004–NM–13–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–15F Airplanes Modified In Accordance With Supplemental Type Certificate (STC) SA1993SO; and Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes in All-Cargo Configuration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for the airplanes listed above. For certain airplanes, this proposed AD would require inspecting to determine the airplane's cargo configuration, and reporting findings to the FAA. For airplanes modified in accordance with a certain STC or with a cargo configuration that deviates from the as-delivered configuration, this proposed AD would require revising certain manuals and manual supplements to specify certain cargo limitations. This proposed AD also would require relocating all cargo restraints on the main cargo deck. This proposed AD is prompted by reports that deficiencies related to the cargo loading system may exist on all McDonnell Douglas Model DC–9–15F airplanes modified in accordance with STC SA1993SO. We are proposing this AD to ensure that cargo in the main cabin is adequately restrained and to prevent failure of components of the cargo loading system, failure of the floor structure, or shifting of cargo. Any of these conditions could cause cargo to exceed load distribution limits or cause damage to the fuselage or control cables, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by August 23, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rany Azzi, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6083; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18561; Directorate Identifier 2004–NM–13–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each

substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received reports that deficiencies related to the cargo loading system may exist on all McDonnell Douglas Model DC–9–15F airplanes modified in accordance with supplemental type certificate (STC) SA1993SO. These deficiencies include inadequate design of the cargo loading system and loading procedures, and lack of identification of loading devices and restraining methods. This condition, if not corrected, could lead to cargo in the main cabin being inadequately restrained, and failure of components of the cargo loading system, failure of the floor structure, or shifting of cargo. These conditions could cause cargo to exceed load distribution limits, or cause damage to the fuselage or control cables, which could result in reduced controllability of the airplane.

Explanation of Applicability

We have determined that any McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes in all-cargo configuration may have been modified from the configuration as delivered by the airplane manufacturer to have a cargo configuration with deficiencies similar to those on airplanes modified in accordance with STC SA1993SO. Therefore, these airplanes may be subject to the same unsafe condition identified on Model DC–9–15F airplanes modified in accordance with STC SA1993SO.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require, for airplanes not modified in accordance with STC SA1993SO, performing an inspection to determine the airplane's cargo configuration, and reporting details of the cargo configuration to us through the cognizant FAA Principal Maintenance Inspector. For airplanes modified in accordance with STC SA1993SO and airplanes found to have a cargo configuration that deviates from the original configuration as delivered by McDonnell Douglas (including, but not limited to, missing vertical side restraints or revised fore/aft restraint configuration), this proposed AD would also require revising the airplane flight manual (AFM), AFM supplements, airplane weight and balance manual (AWBM), and AWBM supplements. These manual revisions would limit the allowable cargo load, specify the types of unit loading devices (ULDs) (containers and pallets) that may be used, and limit the center-of-gravity shift of each loaded ULD. For affected airplanes, this proposed AD also would require operating the airplane in accordance with these limitations and relocating all fore/aft cargo restraints on the main cargo deck to left and right buttock line 22.0 and 44.5.

We considered these factors when we developed the compliance time for the proposed actions:

- The degree of urgency associated with addressing the subject unsafe condition.
- The time that would be necessary to accomplish the proposed requirements.

Based on these factors, we set a compliance time of 60 days (after the effective date of the AD) for completing the proposed inspection and report, and 90 days (after the effective date of the AD) for completing the manual revisions and relocation of cargo restraints, as applicable. Those compliance times represent an appropriate period of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

This proposed AD would affect about 3 airplanes of U.S. registry, out of 5 airplanes modified in accordance with STC SA1993SO worldwide. The following table provides the estimated costs for U.S. operators of these airplanes to comply with this proposed AD.

ESTIMATED COSTS: AIRPLANES MODIFIED IN ACCORDANCE WITH STC SA1993SO

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Manual changes	1	$65	None	$65	$195
Relocation of cargo restraints on main deck	24	65	None	1,560	4,680

This proposed AD would also affect about 27 airplanes of U.S. registry out of 28 airplanes worldwide that are in all-cargo configuration. The following table provides the estimated costs for U.S. operators of these airplanes to comply with this proposed AD.

ESTIMATED COSTS: AIRPLANES IN ALL-CARGO CONFIGURATION

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspection/Reporting	8	$65	None	$520	$14,040

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2004–18561; Directorate Identifier 2004–NM–13–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 23, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–15F airplanes modified in accordance with supplemental type certificate (STC) SA1993SO; and Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes in all-cargo configuration; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports that deficiencies related to the cargo loading system may exist on all McDonnell Douglas Model DC–9–15F airplanes modified in accordance with STC SA1993SO. We are issuing this AD to ensure that cargo in the main cabin is adequately restrained and to prevent failure of components of the cargo loading system, failure of the floor structure, or shifting of cargo. Any of these conditions could cause cargo to exceed load distribution limits or cause damage to the fuselage or control cables, which could result in reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Airplanes Not Modified in Accordance With STC SA1993SO: Inspection and Reporting

(f) For airplanes not modified in accordance with STC SA1993SO: Within 60 days after the effective date of this AD, perform an inspection of the main deck cargo compartment to determine the details of the airplane's cargo configuration. Within 60 days after the effective date of this AD, submit a report of the details of the airplane's cargo configuration through the FAA Principal Maintenance Inspector (PMI), or the cognizant Flight Standards District Office, as applicable, to the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The report must include the airplane serial number, inspection results, and the information specified in paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) Restraint system: Does the airplane have vertical side restraints installed on the main deck floor? How many vertical side restraints are installed per airplane side?

(2) Vertical fore/aft restraints: How many vertical fore/aft restraints are installed on each end of a pallet position?

(3) For airplanes with missing vertical side restraints: Is a bump rail installed?

(4) Unit Loading Devices (ULDs): What type/model ULDs are used for cargo carriage in affected airplanes? Obtain NAS 3610 designation from affixed data plate as required by Technical Standard Order (TSO) C90a, b, c, or designation provided by STC or other approved means. Is there a manual or document that indicates the type/model of ULDs to use? If there is such a manual or document, include the manual/document number and revision level in the report required by paragraph (f) of this AD.

Airplanes Deviating From Original Configuration: Required Action

(g) During the inspection required by paragraph (f) of this AD, if the airplane's cargo configuration deviates from the original configuration as delivered by McDonnell Douglas (including, but not limited to, missing vertical side restraints or revised fore/aft restraint configuration), accomplish paragraphs (h) and (i) of this AD.

Manual Revisions

(h) For airplanes modified in accordance with STC SA1993SO and airplanes specified in paragraph (g) of this AD: Within 90 days after the effective date of this AD, revise the Limitations section of the airplane flight manual (AFM), the AFM supplements, the Limitations section of the airplane weight and balance manual (AWBM), and the AWBM supplements to include the information specified below. This may be accomplished by inserting a copy of this AD into the affected manual or supplement. After accomplishment of these revisions, the airplane must be operated in accordance with these limitations.

''REDUCTION IN CARGO LOADS AS FOLLOWS:

- Zone 1 (most forward): Limited to a maximum of 4,000 pounds,
- Zones 2 through 7: Limited to a maximum of 5,200 pounds each,
- Zone 8 (most aft): Limited to a maximum of 2,000 pounds.

Note: The maximum total payload that can be carried on the main deck is limited to the lesser of:

- The approved cargo barrier weight limit,
- Weight permitted by the approved maximum zero-fuel weight,
- Weight permitted by the approved main deck position weights,
- Weight permitted by the approved main deck running load or distributed load limitations, or
- Approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

LIMITATIONS:

Use only unit loading devices (ULDs) (containers and pallets) that are structurally compatible with the cargo loading system. One means of establishing compatibility is through compliance with the specifications of NAS 3610 for ULDs approved under Technical Standard Order (TSO) C90a, b, or c; or as provided by the appropriate instructions of a Supplemental Type Certificate or other approved means. Alternative methods of compliance can be obtained as specified in paragraph (j) of this AD.

Ensure proper restraining of the ULDs by engaging all cargo loading system restraints.

The center-of-gravity shift of each ULD must not exceed 10 percent of its base longitudinal or lateral directions.''

Relocation of Cargo Restraints

(i) For airplanes modified in accordance with STC SA1993SO and airplanes specified in paragraph (g) of this AD: Within 90 days after the effective date of this AD, relocate all fore/aft cargo restraints in the main cargo deck to left and right buttock lines 22.0 and 44.5.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Atlanta ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15519 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18562; Directorate Identifier 2003–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require replacing the bracket for wire bundle of the fuel quantity indicating system (FQIS), performing a general visual inspection of the FQIS wire bundle for damage, and doing corrective actions if necessary. This proposed AD is prompted by a report of an incorrectly installed FQIS wire bundle. We are proposing this AD to prevent chafing of the FQIS wire(s) in the center fuel tank, which, when combined with a lightning strike or a power wire short to the FQIS wire(s), could result in arcing in the center fuel tank and consequent fuel tank explosion.

DATES: We must receive comments on this proposed AD by August 23, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 200–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18562; Directorate Identifier 2003–NM–147–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

During an FAA audit at the manufacturer's facility, a support bracket for the wire bundle of the fuel quantity indicating system (FQIS) was found incorrectly installed in the center fuel tank on a Boeing Model 737–800 series airplane. An FQIS wire bundle

attached to a wire support bracket installed in an inverted position could lead to an FQIS wire(s) chafing against the structure. This condition, if not corrected, when combined with a lightning strike or a power wire short to the FQIS wire(s), could result in arching in the center fuel tank and consequent fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–28–1190, Revision 1, dated March 27, 2003. The service bulletin describes procedures for replacing the bracket for the FQIS wire bundle with a new, improved bracket; performing a general visual inspection of the FQIS wire bundle for damage; and performing corrective actions, if necessary. The corrective actions include repairing the FQIS wire bundle or replacing the FQIS wire bundle with a new FQIS wire bundle. We have determined that accomplishing the actions specified in the service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require replacing the bracket for the FQIS wire bundle, performing a general visual inspection of the FQIS wire bundle for damage, and doing corrective actions if necessary. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 1,063 airplanes of the affected design in the worldwide fleet. This Ad would affect about 518 airplanes of U.S. registry.

Replacing the bracket would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $186 per airplane. Based on these figures, we estimate the cost of the proposed replacement on U.S. operators to be $130,018, or $251 per airplane.

Inspecting the FQIS wire bundle would take approximately 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of the proposed inspection on U.S. operators to be $33,670, or $65 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–1852; Directorate Identifier 2003–NM–147–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 23, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 737–600, –700, –700C, –800, and –900 series airplanes, as listed in Boeing Special Attention Service Bulletin 737–28–1190, Revision 1, dated March 27, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of an incorrectly installed wire bundle of the fuel quantity indicating system (FQIS). We are issuing this AD to prevent chafing of the FQIS wire(s) in the center fuel tank, which, when combined with a lightning strike or a power wire short to the FQIS wire(s), could result in arcing in the center fuel tank and consequent fuel tank explosion.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement and Inspection

(f) Within 24 months after the effective date of this AD, replace the bracket for the FQIS wire bundle with a new improved bracket, perform a general visual inspection of the FQIS wire bundle for damage, and perform any applicable corrective actions, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1190, Revision 1, dated March 27, 2003. Do any applicable corrective actions before further flight.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Actions Accomplished in Accordance with Previous Issue of Service Bulletin

(g) Actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–28–1190, dated January 16, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install a bracket, part number 287A9111–3, for the FQIS wire bundle, on any airplane.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15518 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18564; Directorate Identifier 2004–NM–16–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Model EMB–135 and –145 series airplanes. This proposed AD would require modifying the total air temperature (TAT) sensor heating system. This proposed AD is prompted by a report that the fully automated digital electronic control (FADEC) unit failed to compensate for ice accretion on the engine fan blades, which was caused by a false temperature signal from the TAT sensor to the FADEC. We are proposing this AD to prevent failure of the TAT sensor, which could result in insufficient thrust either to take off or, if coupled with the loss of an engine during takeoff, could result in the inability to abort the takeoff in a safe manner, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by August 9, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18564; Directorate Identifier 2004–NM–16–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain Model EMB–135 and –145 series airplanes. The DAC advises that, during a flight test, the fully automated digital electronic control (FADEC) unit failed to increase the engine thrust during takeoff to compensate for ice accretion (buildup) on the engine fan blades. Investigators found that the failure happened because the total air temperature (TAT) sensor heating element was operated excessively on the ground. The TAT sensor then sent a false temperature signal to the FADEC. This false signal indicated that the ambient (outside air) temperature was higher than the actual temperature reading. If an airplane is taking off in ambient temperatures that are low enough to lead to ice accretion on the engine fan blades, it is possible that the FADEC would not receive the true temperature reading and, therefore, would fail to compensate for the ice accretion. Insufficient thrust could result in failure to take off, or, if coupled with the loss of an engine during takeoff, could result in the inability to abort the takeoff in a safe manner, and consequent reduced controllability of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–30–0028, Revision 08, dated August 20, 2003. The service bulletin describes procedures for modifying the TAT sensor heating system. The modification includes installing new sockets and relays, changing certain

electrical connections, connecting wires to the new relays, stowing and insulating certain wires, testing the electrical connections for continuity, and doing an operational test of the TAT sensor heating system. We have determined that accomplishing the actions specified in the service information will adequately address the unsafe condition.

The DAC mandated the service information and issued Brazilian airworthiness directive 2004–01–02, dated January 27, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require modifying the TAT sensor heating system. The proposed AD would require using the service information described previously to perform these actions.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modify the TAT sensor heating system ...	8	$65	$443	$963	434	$417,942

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2004–18564; Directorate Identifier 2004–NM–16–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 9, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EMB–135 and –145 series airplanes; as listed in EMBRAER Service Bulletin 145–30–0028, Revision 08, dated August 20, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that the fully automated digital electronic control (FADEC) unit failed to compensate for ice accretion on the engine fan blades, which was caused by a false temperature signal from the total air temperature (TAT) sensor to the FADEC. We are issuing this AD to prevent failure of the TAT sensor, which could result in insufficient thrust either to take off or, if coupled with the loss of an engine during takeoff, could result in the inability to abort the takeoff in a safe manner, and consequent reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 90 days after the effective date of this AD: Modify the TAT sensor heating system in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–30–0028, Revision 08, dated August 20, 2003.

Modifications Done According to Previous Revisions of the Service Bulletin

(g) Modifications done before the effective date of this AD in accordance with the revisions of the service bulletin in Table 1 of this AD are acceptable for compliance with the corresponding action in this AD.

TABLE 1—PREVIOUS REVISIONS OF THE SERVICE BULLETIN

EMBRAER service bulletin	Revision	Date
145–30–0028	07	April 10, 2003.
145–30–0028	06	Sept. 26, 2001.
145–30–0028	05	May 24, 2001.
145–30–0028	04	March 13, 2001.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) Brazilian airworthiness directive 2004–01–02, dated January 27, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15517 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18565; Directorate Identifier 2003–NM–168–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes; and A340–541 and –642 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A330, A340–200, and A340–300 series airplanes; and A340–541 and –642 airplanes. This proposed AD would require inspecting for damage to certain actuators of the low-pressure shut-off valve (LPSOV), and related investigative and corrective actions if necessary. This proposed AD was prompted by a report of damage to the LPSOV pedestal. We are proposing this AD to ensure that, in the event of an engine fire, the LPSOV actuator functions properly to delay or block the fuel flow to the engine and prevent an uncontrollable fire.

DATES: We must receive comments on this proposed AD by August 9, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18565; Directorate Identifier 2003–NM–168–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You may examine the AD docket that contains the proposal, comments, and any final disposition in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition associated with valves operated by the twin motor actuator (TMA) in the fuel-feed system may exist on certain Airbus Model A330 and A340 series airplanes. A locating pin (dowel) inside the actuator mounting flange is designed to engage with a slot in the valve drive assembly to align the actuator and low-pressure shut-off valve (LPSOV) before a V-band clamp is installed to secure the assembly. During a maintenance engine run-up, a fuel-feed valve was found partly open; however, the fuel system indicated the valve was closed, and no electronic centralized aircraft monitor warning was triggered. Subsequent investigation indicated that the actuator had been installed in an incorrect position relative to the valve, and the locating pin and the slot were damaged. After the LPSOV, associated pedestal assembly, and TMA were subsequently replaced, the valve assembly operated correctly. Further investigation showed that a V-band clamp can be installed if the pin is too far from the actuator mounting flange and the pin isn't engaged in the slot. The potential resulting damage to the pedestal, in the event of an engine fire, could prevent the LPSOV actuator from properly functioning to delay or block the fuel flow to the engine, which could result in an uncontrollable fire.

Relevant Service Information

Airbus has issued Service Bulletins A330–28–3083 (for Model A330 series airplanes) and A340–28–4098 (for Model A340 series airplanes), both dated March 25, 2003. The service information specifies identifying the part number of the low-pressure fuel-feed actuators. For certain actuator part numbers, the service bulletins describe the following procedures, including related investigative and corrective actions:

• Inspecting for damage to the LPSOV pedestal, including the locating slot and pin of the actuator;

• Measuring the distance from the face of the mounting flange to the top of the locating pin;

• Repairing the actuator if that distance exceeds certain limits; and

• Remeasuring the flange-to-pin distance before reinstalling an actuator with the subject part number.

We have determined that accomplishment of the actions specified in the service information will adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directives 2003–359(B) and 2003–360(B), both dated October 1, 2003, to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletins refer to FR-HITEMP Service Bulletin HTE190021–28–2, dated March 17, 2003, as an additional source of service information for measuring the flange-to-pin distance and correcting any discrepancy.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require accomplishment of the actions specified in the service information described previously.

Clarification of Proposed Applicability

The French airworthiness directives specify that Model A330 and A340 series airplanes are affected if they are equipped with LPSOV actuators having certain part numbers. The Airbus service bulletins, which are mandated by the French airworthiness directives, specify that operators first identify the part numbers of the actuators. This proposed AD would therefore apply to all Model A330 and A340 series airplanes and require part number identification.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$65	No parts	$65	15	$715

Currently, there are no U.S.-registered Model A340 series airplanes; however, if any Model A340 will be imported and placed on the U.S. Register in the future, the estimated costs in the above table would apply.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2004–18565; Directorate Identifier 2003–NM–168–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by August 9, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330 and A340 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of damage to the pedestal of the low-pressure shut-off valve (LPSOV). We are issuing this AD to ensure that, in the event of an engine fire, the LPSOV actuator functions properly to delay or block the fuel flow to the engine and prevent an uncontrollable fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Part Number Identification

(f) At the applicable time specified in Table 1 of this AD, identify the part number (P/N) of the LPSOV actuator.

TABLE 1.—COMPLIANCE TIMES

For Model—	Do the actions specified in paragraph (f) of this AD at the earlier of the following times:
A330 series airplanes	Within 16,000 flight hours after the effective date of this AD or Within 53 months after the effective date of this AD.
A340 series airplanes	Within 12,000 flight hours after the effective date of this AD or Within 39 months after the effective date of this AD.

(1) For P/N FRH010041: No further action is required by this AD.

(2) For P/N HTE190021 or HTE190026: Before further flight, do a detailed inspection for damage to the LPSOV pedestal, and measure the distance between the face of the mounting flange and the top of the locating pin (dowel). Do the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–28–3083 (for Model A330 series airplanes) or A340–28–4098 (for Model A340 series airplanes), both dated March 25, 2003. Do all related investigative and corrective actions before further flight in accordance with the service bulletin, as applicable.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 2: Airbus Service Bulletins A330–28–3083 and A340–28–4098 refer to FR–HITEMP Service Bulletin HTE190021–28–2, dated March 17, 2003, as an additional source of service information for measuring the flange-to-pin distance.

Parts Installation

(g) As of the effective date of this AD: No person may install an actuator P/N HTE190021 or HTE190026 on any airplane unless the actuator has been measured, and all applicable related investigative and corrective actions have been done, in accordance with the requirements of paragraph (f)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directives 2003–359(B) and 2003–360(B), both dated October 1, 2003, also address the subject of this AD.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15516 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18563; Directorate Identifier 2002–NM–98–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–311 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–311 airplanes. This proposed AD would require reviewing the airplane maintenance records to determine if you did the most recent bonding integrity inspection according to a certain revision of the Maintenance Program Support Manual (PSM), and doing related investigative and corrective actions if necessary. This proposed AD is prompted by the discovery that a certain revision of the PSM omits several fuselage skin panels from a list of skin panels that must be inspected. We are proposing this AD to prevent disbonding of the subject skin panels, which could reduce the load-carrying capacity of the skin panels and result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by August 9, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York 11590; telephone (516) 228–7323; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18563; Directorate Identifier

2002–NM–98–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–311 airplanes. TCCA advises that several fuselage skin panels were inadvertently omitted from the list of those to be inspected in Maintenance Program Support Manual (PSM) 1–83–7A, Revision 6, dated January 30, 2001. Though PSM 1–83–7A, Revision 7, dated August 15, 2001, has been issued, the omission of the subject fuselage skin panels from Revision 6 could result in the subject fuselage skin panels remaining uninspected until the next bonding integrity inspection. The repetitive interval for those inspections is 3 years. Disbonding of the uninspected skin panels could occur in the interval between inspections. This condition, if not corrected, could reduce the load-carrying capacity of the skin panels and result in reduced structural integrity of the airplane.

TCCA issued Canadian airworthiness directive CF–2002–08, dated January 25, 2002, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require you to review airplane maintenance records to determine if you did the most recent bonding integrity inspection according to PSM 1–83–7A, Revision 6. If you did the most recent bonding integrity inspection according to PSM 1–83–7A, Revision 6 (or if you can't conclusively determine what revision of the PSM you used), the proposed AD would require you to do a resonance frequency inspection for disbonding of the skin panels and repair if necessary. You must do the inspection for disbonding according to a method that either we or TCCA (or its delegated agent) approve. We approve PSM 1–83–7A, Revision 7, as one method for accomplishing the inspection for disbonding. You must do any necessary repairs according to a method that we or TCCA (or its delegated agent) approve. This proposed AD would also prohibit you from using PSM 1–83–7A, Revision 6, for inspections for disbonding of fuselage skin panels performed after the effective date of the AD.

Costs of Compliance

This proposed AD would affect about 8 airplanes of U.S. registry. The proposed records review would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $520, or $65 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2004–18563; Directorate Identifier 2002–NM–98–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 9, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model DHC–8–311 airplanes, serial numbers 202 through 298 inclusive, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the discovery that a certain revision of the Maintenance Program Support Manual (PSM) omits several fuselage skin panels from a list of skin panels that must be inspected. We are issuing this AD to prevent disbonding of the subject skin panels, which could reduce the load-carrying capacity of the skin panels and result in reduced structural integrity of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Review of Maintenance Records

(f) Within 14 days after the effective date of this AD, review the airplane maintenance records or maintenance logbook to determine if the most recent bonding integrity inspection of the fuselage skin panels was done according to Bombardier Maintenance Program Support Manual (PSM) 1–83–7A, Revision 6, dated January 30, 2001.

(1) If it can conclusively be determined that the most recent bonding integrity inspection of the fuselage skin panels was done according to PSM 1–83–7A, Revision 5, dated April 30, 1999; or Revision 7, dated August 15, 2001: This AD requires no further action.

(2) If the most recent bonding integrity inspection of the fuselage skin panels was done according to PSM 1–83–7A, Revision 6, dated January 30, 2001, or if it cannot be conclusively determined what revision of PSM 1–83–7A was used: At the applicable compliance time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, do a resonance frequency inspection of the fuselage skin panels listed in Table 1 of this AD, according to a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent). PSM 1–83–7A, Revision 7, dated August 15, 2001, is one approved method.

(i) If no disbonding was found during any previous bonding integrity inspection: Within 1,000 flight hours or 6 months after the effective date of this AD, whichever is first.

(ii) If any disbonding was found during any previous bonding integrity inspection: Within 6 weeks after the effective date of this AD.

TABLE 1.—FUSELAGE SKIN PANELS

Engineering drawing	Skin panel description	PSM 1–83–7A figure/sheet
85330204	Skin, Right Side, Bottom	Figure 4/(Sheet 2).
85330201	Skin, Right Side	Figure 4/(Sheet 5).
85330180	Skin, Right Side, Top	Figure 4/(Sheet 6).
85330181	Skin, Left Side, Top	Figure 4/(Sheet 7).
85330106	Skin, Left Side, Bottom	Figure 4/(Sheet 14).
85330105	Skin, Left Side	Figure 4/(Sheet 15).
85330101	Skin, Left Side, Bottom	Figure 4/(Sheet 16).
85330033	Skin, Bottom	Figure 4/(Sheet 17).
85330032	Skin, Right Side, Lower	Figure 4/(Sheet 18).
85330032	Skin, Right Side, Lower with Service Door	Figure 4/(Sheet 19).
85330031	Skin, Left Side, Lower	Figure 4/(Sheet 20).
85332750	Skin, Bottom, Center	Figure 4/(Sheet 25).
85332750	Skin, Bottom, Center	Figure 4/(Sheet 26).

Repair

(g) If any disbonding is found during the resonance frequency inspection required by paragraph (f) of this AD: Before further flight, repair per a method approved by the Manager, New York ACO; or TCCA (or its delegated agent).

Limitation on Future Inspections

(h) As of the effective date of this AD, no person may use PSM 1–83–7A, Revision 6, dated January 30, 2001, to inspect for disbonding of fuselage skin panels on any airplane having any serial number 202 through 298 inclusive.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, New York ACO, has the authority to approve AMOCs for this AD, if an AMOC is requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) Canadian airworthiness directive CF–2002–08, dated January 25, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on June 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15515 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18465; Airspace Docket No. 04–ASO–8]

Proposed Amendment of Class E Airspace; Somerset, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Somerset, KY. As a result of an evaluation, it has been determined a modification should be made to the Somerset, KY, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway 5, Standard Instrument Approach Procedure (SIAP) to Somerset—Pulaski County—J.T. Wilson Field Airport, Somerset, KY. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before August 9, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18465/ Airspace Docket No. 04–ASO–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–18465/Airspace Docket No. 04–ASO–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gop.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Somerset, KY. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (AIR).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

ASO KY E5 Somerset, KY [Revised]

Somerset—Pulaski County—J.T. Wilson Field Airport, KY
(Lat. 37°03′14″ N, long. 84°36′55″ W)
Cumberland River NDB
(Lat. 36°59′46″ N, long. 84°40′53″ W)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of the Somerset—Pulaski County—J.T. Wilson Field Airport and within 4 miles northwest and 8 miles southeast of the 223° bearing from the Cumberland River NDB extending from the 8.6-mile radius to 16 miles southwest of the NDB.

* * * * *

Issued in College Park, Georgia, on June 23, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–15555 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18343; Airspace Docket No. 04–AAL–11]

Proposed Establishment of Class E Airspace; Alpine Airstrip, Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Alpine Airstrip, Nuiqsut AK. Two new Standard Instrument Approach Procedures (SIAPs) are being published for the Alpine Airstrip. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Alpine Airstrip. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Alpine Airstrip, Nuiqsut AK.

DATES: Comments must be received on or before August 23, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18343/ Airspace Docket No. 04–AAL–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–18343/Airspace Docket No. 04–AAL–11.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Alpine Airstrip, Nuiqsut, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Alpine Airstrip.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAP's for the Alpine Airstrip. The new approaches are Area Navigation (Global Positioning System) (RNAV GPS) RWY 3, original and RNAV GPS RWY 21, original. New Class E controlled airspace extending upward from 700 ft. above the surface within the Alpine Airstrip, Nuiqsut, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Alpine Airstrip.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Alpine, AK [New]

Alpine Airstrip, Nuiqsut, AK
(Lat. 70°20′39″ N., long. 150°56′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Alpine Airstrip, excluding the Nuiqsut Airport Class E airspace.

* * * * *

Issued in Anchorage, AK, on June 29, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–15553 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18342; Airspace Docket No. 04–AAL–10]

Proposed Establishment of Class E Airspace; Nulato, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Nulato, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Nulato Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Nulato, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Nulato, AK.

DATES: Comments must be received on or before August 23, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18342/ Airspace Docket No. 04–AAL–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.ctr.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–18342/Airspace Docket No. 04–AAL–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

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Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Nulato, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Nulato, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAP's for the Nulato Airport. The new approaches are Area Navigation (Global Positioning System) (RNAV GPS) RWY 2, original and RNAV GPS RWY 20, original. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Nulato, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Nulato Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It,

therefore —(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nulato, AK [New]

Nulato Airport, AK
(Lat. 64°43′46″ N., long. 158°04′27″ W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Nulato Airport and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of 64°32′10″ N. 158°18′43″ W., excluding the Galena Class E airspace and that airspace designated for federal airways.

* * * * *

Issued in Anchorage, AK, on June 29, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–15552 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 682

RIN 3084–AA94

Disposal of Consumer Report Information and Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Supplemental initial regulatory flexibility analysis for notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is publishing a supplemental initial regulatory flexibility analysis to aid the public in commenting upon the small business impact of its proposed rule implementing section 216 of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'' or ''Act'').

DATES: Written comments must be received on or before July 30, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''The FACT Act Disposal Rule, R–411007'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H (Annex H), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form clearly labeled ''Confidential,'' and comply with the Commission Rule 4.9(c). 16 CFR 4.9(c). The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

An electronic comment can be filed by (1) clicking on *http://www.regulations.gov*; (2) selecting ''Federal Trade Commission'' at ''Search for Open Regulations;'' (3) locating the summary of this Notice; (4) clicking on ''Submit a Comment on this Regulation;'' and (5) completing the form. For a given electronic comment, any information placed in the following fields—''Title,'' ''First Name,'' ''Last Name,'' ''Organization Name,'' ''State,'' ''Comment,'' and ''Attachment''—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Ellen Finn or Susan McDonald, Attorneys, (202) 326–3224, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This notice supplements the Commission's initial notice of proposed rulemaking, 69 FR 21388 (Apr. 20, 2004), for its proposed rule regarding Disposal of Consumer Report Information and Records, 16 CFR part 682, implementing section 216 of the FACT Act, Pub. L. 108–159 (2003). The Commission's notice of proposed rulemaking included an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 603); however, the Commission has decided to publish the following supplemental analysis in order to provide additional information and opportunity for public comment on the small business impact, if any, of the proposed rule. The Commission notes that there has already been a substantial period for public comment on the proposed rule itself and that the public comments received are posted online at *http://www.ftc.gov/os/comments/disposal/index.htm*.

A. Reasons for the Proposed Rule

Section 216 of the FACT Act requires the Commission to issue regulations regarding the proper disposal of consumer information in order to prevent sensitive financial and personal

information from falling into the hands of identity thieves or others who might use the information to victimize consumers. The requirements of the proposed Rule are intended to implement section 216.

B. Statement of Objectives and Legal Basis

The objective of the proposed Rule, set forth in Proposed Section 682.2(a), is to reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information. *See* Cong. Rec. S13889 (Nov. 4, 2003) (Statement of Sen. Nelson). The legal basis for the proposed Rule is section 216 of the FACT Act.

C. Description of Small Entities to Which the Proposed Rule Will Apply

The proposed Disposal Rule, which tracks the language of section 216 of the FACT Act, applies to ''any person that, for a business purpose, maintains or otherwise possesses consumer information, or any compilation of consumer information.'' As discussed in the initial notice of proposed rulemaking, the entities covered by the proposed Rule would include consumer reporting agencies, resellers of consumer reports, lenders, insurers, employers, landlords, government agencies, mortgage brokers, automobile dealers, waste disposal companies, and any other business that possesses or maintains consumer information.

As discussed in the initial notice of proposed rulemaking, any company, regardless of industry or size, that possesses or maintains consumer information for a business purpose would be subject to the proposed Rule. Therefore, numerous small entities across almost every industry could potentially be subject to the Rule. For the majority of entities subject to the proposed Rule, a small business is defined by the Small Business Administration as one whose average annual receipts do not exceed $6 million or who have fewer than 500 employees.[1]

Although it is impossible to identify every industry that may possess or maintain consumer information [2] for business purposes, the Commission anticipates that, at a minimum, the estimated 231,000 small entities within the finance and insurance industries are likely to be subject to the proposed Rule.[3] Generally, these entities are already subject to the FTC's Gramm-Leach-Bliley Act Safeguards Rule,[4] which contains requirements similar to those in the proposed Rule. As a result, as discussed further below, the marginal cost of compliance with the proposed Disposal Rule for these businesses is likely to be minimal.

In addition, any business, regardless of industry, that obtains a consumer report, or information derived from a consumer report, would be subject to the proposed Rule. Among businesses that might fall into this category are landlords, utility companies, telecommunications companies, and any business that obtains consumer reports for employment screening purposes. The Commission is unaware of any data concerning the frequency with which small businesses such as these obtain consumer reports. As a result, it is not possible to determine precisely how many small businesses outside the finance and insurance industries would be subject to the proposed Rule, or how often these entities would be required to undertake compliance efforts.

Accordingly, the Commission continues to believe that a precise estimate of the number of small entities that fall under the proposed Rule is not currently feasible, and specifically requests information or comment on this issue.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed Rule would not impose any specific reporting or recordkeeping requirements within the meaning of the Paperwork Reduction Act. The proposed Rule would require covered entities, when disposing of consumer information, to take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. What is considered ''reasonable'' will vary according to an entity's nature and size, the costs and benefits of available disposal methods, and the sensitivity of the information involved. In formulating the proposed Rule, the Commission considered alternatives to this approach, and determined that the flexibility afforded by the Rule as proposed would reduce the burden that might otherwise be imposed on small entities by a more rigid, prescriptive rule.

As noted above, entities already subject to the Commission's Safeguards Rule should incur few, if any, additional compliance costs. Among other things, the Safeguards Rule already requires covered entities to develop and implement policies that require the proper disposal of ''customer information'' (as defined in the GLB Act), as well as employee training programs and mechanisms to update its information security program on a periodic basis. Modifying these policies to address the disposal of ''consumer information'' (as defined in the proposed Rule), and training employees on these changes, should therefore be possible at little or no cost. In fact, because the definitions of ''consumer information'' and ''customer information'' overlap, many entities may already be in substantial compliance with the proposed Rule's requirements.

For small businesses not already subject to the GLB Safeguards Rule, compliance costs may be greater. Because the proposed Rule does not mandate specific disposal measures, a precise estimate of compliance costs is not feasible. However, there are certain basic steps that are likely to be appropriate for many small entities. For example, shredding or burning paper records containing consumer information will generally be appropriate. Depending upon the volume of records at issue and the office equipment available to the small entity, this method of disposal may be accomplished by the small entity itself at no cost, may require the purchase of a paper shredder (available at office supply stores for as little as $25), or may require the hiring of a document disposal service on a periodic basis (the costs of which will vary based on the volume of material, frequency of service, and geographic location).

If a small entity has stored consumer information on electronic media (for example, computer discs or hard drives), disposal of such media could be accomplished by a small entity at almost no cost by simply smashing the material with a hammer. In some cases, appropriate disposal of electronic media might also be accomplished by overwriting or ''wiping'' the data prior to disposal. Utilities to accomplish such wiping are widely available for under $25; indeed, some such tools are available for download on the Internet at no cost. Whether ''wiping,'' as opposed to destruction, of electronic media is reasonable, as well as the adequacy of particular utilities to

[1] These numbers represent the size standards for most retail and service industries ($6 million total receipts) and manufacturing industries (500 employees). A list of the SBA's size standards for all industries can be found at *http://www.sba.gov/size/summary-whatis.html.*

[2] ''Consumer Information'' is defined in the proposed Rule as any ''record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report.''

[3] This number represents 2001 totals as reported by the SBA. *See http://www.sba.gov/advo/stats/.*

[4] 16 CFR part 314.

accomplish that ''wiping,'' will depend upon the circumstances.

As the above examples illustrate, although it is not possible to estimate small businesses' compliance costs precisely, such costs are likely to be quite modest for most small entities. Nonetheless, because the Commission is concerned about the potential impact of the proposed Rule on small entities, it specifically invites comment on the costs of compliance for such parties. In particular, although the Commission does not expect that small entities will require legal assistance to develop an appropriate disposal plan, the Commission requests comment on whether small entities believe that they will incur such costs and, if so, what they will be. In addition, the Commission requests comment on the costs, if any, of training relevant employees regarding the proper disposal of consumer information, particularly for entities not subject to the Commission's Safeguards Rule.

E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules

The FTC has not identified any other Federal statutes, rules, or policies that would conflict with the proposed Rule's requirement that covered persons take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. However, the Commission is requesting comment on the extent to which other Federal standards involving privacy or security of information may duplicate, satisfy, or inform the proposed Rule's requirements. In addition, the FTC seeks comment and information about any statutes or rules that may conflict with the proposed requirements, as well as any other State, local, or industry rules or policies that require covered entities to implement practices that comport with the requirements of the proposed Rule.

F. Discussion of Significant Alternatives

Section 216 of the FACT Act requires the Commission to issue regulations regarding the proper disposal of consumer information. The Act also requires that the regulations cover ''any person who possesses or maintains'' consumer report information. This broad coverage furthers the section's purpose of preventing identity theft because the risks created by improper disposal of consumer information are the same regardless of the nature of the entity disposing of the records. In addition, the standards in the proposed Rule are flexible, and take into account a covered entity's size and sophistication, as well as the costs and benefits of alternative disposal methods. Nevertheless, the FTC seeks comment on any significant alternatives, consistent with the purposes of the FACT Act, that could further minimize the Rule's impact on small entities.

In some situations, the Commission has considered adopting a delayed effective date for small entities subject to a new regulation in order to provide them with additional time to come into compliance. In this case, however, in light of the proposed Rule's flexible standard and modest compliance costs, the Commission believes that small entities should feasibly be able to come into compliance with the proposed Rule by the proposed effective date, three months following publication of the final Rule. Nonetheless, the Commission invites comment on whether small businesses might need additional time to come into compliance and, if so, why.

In addition, the Commission has the authority to exempt any persons or classes of persons from the Rule's application pursuant to section 216(a)(3) of the FACTA. As it did in the initial notice of proposed rulemaking, the Commission requests comment on whether there are any persons or classes of persons covered by the proposed Rule that it should consider exempting from the Rule's application pursuant to section 216(a)(3). However, the Commission notes that the statute's purpose of protecting consumers against identity theft could be undermined by the granting of a broad exemption to small entities.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–15579 Filed 7–7–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918 and 1926

[Docket S–042]

RIN 1218–AB77

Employer Payment for Personal Protective Equipment

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of limited reopening of rulemaking record.

SUMMARY: On March 31, 1999, OSHA issued a proposed rule to require employers to pay for all personal protective equipment (with a few specific exceptions) used by their employees. Public comments were received, hearings were held, and the record was closed on December 13, 1999.

OSHA has been evaluating the rulemaking record and is in the process of reaching a final determination on the proposal. While analyzing the issues raised in the original proposal and the evidence in the record relating to these issues, OSHA has determined that one issue needs further public comment. Specifically, the issue relates to whether or how a general requirement for employer payment for personal protective equipment (PPE), should address types of PPE that are typically supplied by the employee, taken from job site to job site or from employer to employer, and considered to be ''tools of the trade.''

In light of the significant comments in the record, OSHA believes that further information is necessary to fully explore the issues concerning a possible limited exception for paying for PPE that is considered to be a ''tool of the trade''. In particular, OSHA is seeking comments that could potentially lead to agreed-upon criteria establishing what constitutes a ''tool of the trade'' for purposes of employer payment. As discussed earlier, moving from job-to-job may be one consideration, as may be the personal nature of certain PPE. This notice therefore reopens the record for a limited period of time for further public comment on this issue. The notice discusses the evidence currently in the record on this issue and presents a series of questions to assist the public in providing further information that would be helpful to OSHA.

DATES: Comments must be postmarked no later than August 23, 2004.

ADDRESSES: You may submit comments, identified by Docket S–042, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OSHA Web site: *http://dockets.osha.gov.* Follow the instructions for submitting comments.

Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the address listed below. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

• Fax: 202–693–1648. Comments must be limited to 10 pages or fewer and the original and one copy of the comment must be sent to the Docket Office immediately thereafter at the address below.

• Mail: Send two copies of your comments to Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

• Hand Delivery/Courier: Deliver two copies of your comments to Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office and Department of Labor are 8:15 a.m. to 4:45 p.m., e.s.t.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://dockets.osha.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov,* or the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: George Shaw, Acting Director, Office of Communications, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–1999, FAX (202) 693–1635.

SUPPLEMENTARY INFORMATION: Many Occupational Safety and Health Administration (OSHA) health, safety, maritime, and construction standards require employers to provide their employees with protective equipment, including personal protective equipment (PPE), when such equipment is necessary to protect employees from job-related injuries, illnesses, and fatalities. These requirements are codified in Part 1910 (General Industry standards), Part 1915 (Shipyard standards), Part 1917 (Marine Terminal standards), Part 1918 (Longshoring standards), and Part 1926 (Construction standards), of Title 29 of the Code of Federal Regulations. These requirements address PPE of many kinds, including hard hats, gloves, goggles, safety shoes, safety glasses, welding helmets and goggles, faceshields, chemical protective equipment and clothing, fall protection equipment, and so forth.

The provisions in OSHA standards that require PPE usually state that the employer is to provide or ensure the use of such PPE. Some of these provisions specify that the employer is to provide such PPE at no cost to the employee, some suggest that the PPE is owned by the employee, while other provisions are silent as to who is obligated to pay for this equipment.

On March 31, 1999, OSHA issued a proposed rule to require employers to pay for all personal protective equipment (with a few specific exceptions) used by their employees (64 FR 15401). Public comments were received, hearings were held, and the record was closed on December 13, 1999.

OSHA's proposal reviewed the background of the question of who should pay for personal protective equipment under OSHA standards. A brief summary of this background follows.

Employees often need to wear protective equipment, including personal protective equipment (PPE), to be protected from injury, illness, and death caused by exposure to workplace hazards. PPE includes many different types of protective equipment that an employee uses or wears, such as fall arrest systems, safety shoes, and protective gloves. In addition to the great variety of protective equipment, there are many situations in which PPE is necessary to protect employees from hazards. For example, protective gloves can protect hands from lacerations, burns, absorption of toxic chemicals, and abrasion. Safety shoes protect an employee's feet from being crushed by falling objects. Respirators can protect employees from being over-exposed to toxic substances.

Many OSHA standards require employers to provide PPE to their employees or to ensure the use of PPE. Some standards indicate in broad performance terms when PPE is to be used, and what is to be used (see, for example, 29 CFR 1910.132). Other provisions are very specific, such as 29 CFR 1910.266(d)(1)(iv), which requires that chain saw operators be provided with protective leggings during specific operations, and 29 CFR 1910.1027(g), which requires respiratory protection for workers exposed to cadmium above the permissible exposure limit.

Some OSHA PPE standards specifically require the employer to pay for PPE. However, most are silent with regard to whether the employer is obligated to pay. OSHA's health standards issued after 1977 have made it clear both in the regulatory text and in the preamble that the employer is responsible for providing necessary PPE at no cost to the employee. See, for example, OSHA's inorganic arsenic standard issued in 1978 at 29 CFR 1910.1018(h)(2) (i) and (j), and the respiratory protection standard, issued January 8, 1998 (29 CFR 1910.134). In addition, the regulatory text and preamble discussion for some safety standards have also been clear that the employer must both provide and pay for PPE. See, for example, the logging standard at 29 CFR 1910.266(d)(1)(iii) and (iv).

On the other hand, certain PPE provisions quite clearly do not require the employer to pay for the protective equipment. Thus, the same logging standard that requires the employer to pay for many types of PPE makes an exception for certain types of logging boots (see 29 CFR 1910.266(d)(1)(v)). In the case of foot protection, such as logging boots, paragraph (d)(1)(v) of that standard leaves the issue of who pays for some kinds of logging boots open for negotiation and agreement between the employer and employee.

For most PPE provisions in OSHA's standards, however, the regulatory text does not explicitly address the issue of payment for personal protective equipment. For example, 29 CFR 1910.132(a) is the general provision requiring employers to provide PPE when necessary to protect employees. This provision states that the PPE must be provided, used, and maintained in a sanitary and reliable condition. It does not state that the employer must pay for it or that it must be provided at no cost to employees.

The question of who pays for OSHA required PPE has been subject to varying interpretation and application by employers, OSHA, the Review Commission and the Courts.

OSHA attempted to establish a policy and clarify the issue of payment for required PPE in a memorandum to its field staff dated October 18, 1994, ''Employer Obligation to Pay for Personal Protective Equipment.'' OSHA stated that for all PPE standards the employer must both provide, and pay for, the required PPE, except in limited situations. The memorandum indicated that where PPE is very personal in nature and usable by the worker off the job, such as is often the case with steel-toe safety shoes (but not metatarsal foot

protection), the issue of payment may be left to labor-management negotiations. This memorandum was intended to clarify the Agency's policy with regard to payment for required PPE.

However, the Occupational Safety and Health Review Commission declined to accept the interpretation embodied in the 1994 memorandum as it applied to Sec. 1910.132(a), OSHA's general PPE standard for general industry, in *Secretary of Labor* v. *Union Tank Car Co.,* 18 O.S.H.Cas. (BNA) 1067 (Rev. Comm'n. 1997). In that case, an employer was issued a citation for failing to pay for metatarsal foot protection and welding gloves. The Commission vacated the citation, finding that the Secretary had failed to adequately explain the policy outlined in the 1994 memorandum in light of several earlier letters of interpretation from OSHA that were inconsistent with that policy.

To respond to the Commission's Union Tank Car decision and to clarify when employers are obligated to pay for PPE, OSHA issued the current proposal. The proposed rule would establish a uniform requirement that employers pay for all types of PPE required under OSHA standards, except for safety shoes, prescription safety eyewear and logging boots. The proposal cited two main justifications for requiring employers to pay for PPE. First, OSHA preliminarily concluded that the OSH Act implicitly requires employers to pay for PPE that is necessary for employees to perform their jobs safely. The agency believed that this interpretation was supported by the statute's intent to make employers solely responsible for compliance with standards, and by the undisputed principle that employers must pay for engineering and work practice controls necessary to achieve safe working conditions. OSHA tentatively concluded that PPE serves the same purpose as engineering controls in abating hazards, and should be paid for by employers just as engineering controls are.

OSHA also preliminarily concluded that the proposed rule would enhance compliance with existing PPE requirements in several practical ways, thereby significantly reducing the risk of non-use or misuse of PPE. On this basis, OSHA tentatively concluded that the proposed rule was justified as an ancillary requirement of existing PPE standards.

In summary, the proposal provided for employer payment for personal protective equipment, with certain specific exceptions for safety-toe protective footwear, prescription safety eyewear and logging boots required by 29 CFR 1910.266(d)(1)(v). The proposal also raised several issues on which public comments, views and data were particularly solicited. Among the issues raised were whether there are additional types of PPE which should be excepted from the proposed requirement for employer payment; and whether certain unique circumstances in some industries, such as high employee turnover, frequent employee movement from job site to job site or employer to employer, or other conditions warranted different treatment in the standard.

OSHA has reviewed the evidence in the record in the process of reaching a final determination on the proposal. OSHA believes that the record presents one particular issue that needs additional public comment to help OSHA conclude the proceeding. This issue pertains to types of personal protective equipment that have been referred to in the record as ''tools of the trade,'' and how any general requirement for employer payment for PPE should address such types of PPE.

In brief, the record suggests that just as some employees are expected to bring their own tools to the job for certain job tasks, and to pay for their own tools, so too are they expected to bring certain items of protective gear as part of their ''toolbox.'' This practice of employees bringing their own protective equipment as part of their toolbox reflects longstanding practices in some industries, the uniquely personal nature of this equipment, the economic realities of certain industries where employees move frequently from job site to job site and from employer to employer, and the implicit recognition that the employee may be in a better position to acquire and maintain the proper protective equipment.

In the preamble to the proposed rule, OSHA described using a similar rationale to exempt logging boots from employer payment requirements in the logging standard (64 FR 15413). Briefly, OSHA believed it appropriate for employees to furnish their own boots since employees typically took them in moving from one logging establishment to another, because it was established custom in the logging industry for employees to pay for their own boots, and because each pair of boots were sized for only one employee. OSHA believes that these characteristics might also apply to other types of PPE considered by many in the record to be ''tools of the trade'' in certain industries.

Accordingly, OSHA is inviting comment on whether and how PPE regarded as tools of the trade should be included in any requirement for employer payment for PPE. If the rule contains a specific provision about ''tools of the trade'', how should such ''tools of the trade'' be defined? OSHA is interested in obtaining an understanding of the circumstances or settings in which PPE is considered a tool of the trade that employees customarily supply themselves and carry with them from job to job. What are the reasons for treating PPE as ''tools of the trade'' in these circumstances? What interests do these practices serve? Should these reasons be considered in determining employers' obligations under the Occupational Safety and Health Act?

As the following discussion shows, the record at present contains differing views and incomplete information on what kinds of PPE should be considered to be ''tools of the trade'', on how payment practices vary within industry sectors, and on the reasons for these practices. For example, some testimony in the record indicates that PPE used by welders is usually considered tools of the trade paid for by employees in the shipbuilding industry. Anthony Buancore of the Shipbuilders Council of America (SCA) commented that, in the shipyard industry, welders' leathers and gloves are considered to be necessary PPE and a part of an employee's tools of the trade (Tr. 103). William McGill, representing the International Brotherhood of Electrical Workers also testified that welders' PPE was not paid for by the company and that these costs have been the subject of collective bargaining agreements (Tr. 570). Avondale Industries, Inc., noted that some items of welders' PPE are worn next to the skin and could absorb perspiration. According to Avondale, such PPE cannot be used by more than one employee (Ex. 12–112).

However, it is not clear from the record that this reflects a common practice throughout the maritime industry. Testimony relating to a meeting of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) indicated that other shipbuilding employers provide and pay for welding equipment, and that MACOSH declined to provide OSHA with a recommendation on whether such PPE should be exempted from a payment requirement (Tr. 132–134).

William Finkler of Union Tank Car company, a manufacturer of rail cars, testified that

> * * * we oppose the proposed standard because to a large degree it contradicts traditional cost allocations in skilled trades. For example, professional welders know that welding gloves, leather aprons and welding helmets are personal ''tools of the trade'' that

they must provide. And many of them come to work with their own equipment. (Tr. 144).

In the construction industry, welders who perform temporary duty are also expected to bring necessary PPE with them, according to testimony by a representative of the Associated General Contractors (Tr. 652, Ex. 32).

Employers and employer representatives in the electric power industry maintained that pole climbing equipment including lineman's belts, gloves, gaffs, hooks, pads and spikes are considered to be tools of the trade rather than PPE and that linemen customarily purchase the equipment themselves and take it with them from job to job (Ex. 12–16, 12–38, 12–150, 12–161, 12–183, 12–206, 12–201). Comments to the record indicated that reasons for this practice include the need to size and fit the belt to the individual employee, that exchanging such belts with other employees could increase safety risks, and that linemen's hook gaffs are typically sharpened to the ''taste'' of the lineman and are individually adjusted to the lineman's calf length and preference. (Ex. 12–16, 12–38, 12–144).

David Ayers, Director of Safety for the MYR Group, who provides contracted electrical services, testified that these factors along with the use of labor pools and high turnover in the industry make it necessary for employees to pay for certain kinds of linesmen PPE:

> * * * we have a very transient workforce and a lot of high turnover because of the jobs' completion.
>
> Contractors like the MYR companies draw upon a common labor pool in each of the geographic areas in which they perform their projects. * * * A lineman may have as many as four or more different employers in a year. * * * Today MYR already provides the following personal protective equipment to each employee whose work assignment requires it; hard hats, hard hat liners, hard hat straps, safety glasses, ear protection, full body harness, shock-absorbing lanyard, primary rubber sleeves and gloves. * * * However, our linemen have traditionally—and we believe appropriately—purchased their own lineman's tool belts, pull straps, climber sets * * * certain tools, and they have purchased their own work shoes and work clothes.
>
> The lineman has his or her own preference in the type of belt and who manufactures it. The lineman selects the pads and hooks to his or her liking. Linemen sharpen their hooks to their own standards. Linemen have their own preferences for a particular brand of pull strap.
>
> This subject has been the subject of the collective bargaining process with individual locals of the International Brotherhood of Electrical Workers across the country. (Tr. 633–637).

However, John Devlin of the Utility Workers' Union of America stated that climbing gear, belts, and harnesses are usually provided by employers in the electrical utility industry (Tr. 457–459). He also testified that, as a welder with an electric utility company, the employer provided and paid for all PPE except safety shoes (Tr. 447).

The record suggests that there may be other circumstances in which employees customarily furnish certain items of PPE as tools of the trade, and that these may be relevant in determining the scope of the final rule. For example, a representative of a temporary labor company testified that they hire workers primarily to provide temporary labor for construction jobs and that employees pay for basic PPE such as hard hats, safety glasses, and safety shoes (Tr. 546). Bill Golding of Betco Scaffold Company commented that an ''excessive expense'' would be incurred to pay for PPE for temporary employees that work on several job sites (Ex. 12–18). Examples of PPE that the New Mexico Building Branch, Associated General Contractors believed should be ''part of an employee's tool chest'' included hard hats, safety shoes, eye and hearing protection, and ''gloves for specific hazards'' (Ex. 12–109). Similarly, the National Association of Home Builders commented that ''piece workers are required to provide all of their own equipment for the job they are performing'', arguing that ''employers do not typically supply employees with the hammers and other tools.'' (Ex. 33). In written comments, Caterpillar stated that, ''we expect temporary employees to provide their own common forms of PPE. We may also expect temporary employees to provide specialized equipment unique to an unusual job'' (Ex. 12–66). This record suggests that in some industries that use workers from a labor pool or temporary agency, employers may expect employees to bring their own PPE suitable for the job to be performed.

In light of the issues outlined above, OSHA believes that further information is necessary to fully explore the issues concerning PPE as ''tools of the trade.'' OSHA invites comment on how a final rule generally requiring employers to pay for PPE should address PPE considered to be tools of the trade. Specifically, OSHA invites public comment on the following questions:

1. If OSHA issues a final rule that generally requires employers to pay for most PPE, should safety equipment considered to be ''tools of the trade'' be included or excluded from the requirement? On what basis?

2. Several criteria for treating PPE as a tool of the trade were identified by rulemaking participants. These included: (1) The PPE was expected to be used by only one employee for reasons of hygiene or personal fit, (2) the employee using the PPE typically worked on multiple job sites or for several employers and brought the PPE with them to each job site, and (3) the practice of considering PPE to be a tool of the trade was customary in the industry. Are these reasonable criteria for considering whether or not to require employer payment for PPE regarded as a tool of the trade? Are there other criteria that would justify considering PPE to be a tool of the trade? If so, why?

3. If the rule includes a specific provision for PPE considered to be tools of the trade, should the rule identify specific types of PPE that fall into this category, or should the rule generally apply a broad category of PPE defined to be tools of the trade? How should the broad category of PPE as tools of the trade be defined so that it is clear and unambiguous to employers and employees?

4. Should PPE be considered to fall into the category of ''tools of the trade'' only for specific industry sectors where it has been customary to consider PPE as tools of the trade? If so, which industry sectors? How many employees use PPE that is considered to be tools of the trade? What are their occupations?

5. Should PPE be considered to be tools of the trade only where the PPE is personal in nature and employees typically work for multiple employers and/or go from job site to job site?

6. Provide specific examples of safety equipment that employees typically furnish themselves and carry from job site to job site or from employer to employer in your industry. What interests does this practice serve? In such instances, how does the employer ensure that the PPE is effective and complies with applicable standards? What is typically the practice when employees fail to bring such PPE to the job site? Please describe to the best of your knowledge how many employees wear such PPE in your industry and how often it needs to be replaced.

7. What effect might employee payment for PPE treated as tools of the trade have on workplace safety and health?

Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, directed the preparation of this notice under the authority granted by: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of

1970 (29 U.S.C. 653, 655, 657); section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); section 41, the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2002 (67 FR 65008); and 29 CFR part 1911.

Signed at Washington, DC, on July 1, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–15525 Filed 7–7–04; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7784–5]

RIN 2060–AJ31

Regional Haze Regulations and Guidelines for Best Available Control Technology (BART) Determinations; Notice of Public Comment Period Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period extension.

SUMMARY: The EPA is announcing that the public comment period for the proposed rule ''Regional Haze Regulations and Guidelines for Best Available Control Technology (BART) Determinations'' (69 FR 25184, May 5, 2004) is extended from July 6, 2004 until July 15, 2004. We are required under CAA section 307(d)(5)(iv) to accept comments for at least 30 days after a public hearing. Two public hearings were held on the proposed rule; one on June 4, 2004, in Alexandria, VA, and the second on June 15, 2004, in Denver, CO. Because we held our second public hearing on June 15, 2004, the public comment period will remain open until July 15, 2004.

DATES: Comments must be submitted by July 15, 2004.

ADDRESSES: Written comments on the BART rule may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the BART rule for the addresses and detailed instructions.

Documents relevant to the proposed rule are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through EPA's electronic Docket system at *http://www.epa.gov/edocket.*

The EPA web site for the proposed rule is at *http://www.epa.gov/air/visibility/actions.html.*

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed BART Rule should be addressed to Kathy Kaufman, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C504–01), Research Triangle Park, NC, 27711, telephone number (919) 541–0102, e-mail *kaufman.kathy@epa.gov,* or Todd Hawes, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C504–01), Research Triangle Park, NC, 27711, telephone number (919) 541–5591, e-mail at at *hawes.todd@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Get Copies of This Document and Other Related Information?

The BART rule is available at the EPA website identified above, and was published in the **Federal Register** on May 5, 2004 at 69 FR 25184.

The EPA has established the official public docket for the BART rule under Docket ID No. OAR–2002–0076. The EPA has also developed a web site for the proposal at the addresses given above. Please refer to the proposals for detailed information on accessing information related to the proposal.

Dated: July 1, 2004.

Jeff Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 04–15531 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 130
Thursday, July 8, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–055–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of provisions of the Animal Welfare Act regulations related to the humane transportation of animals in commerce.

DATES: We will consider all comments that we receive on or before September 7, 2004.

ADDRESSES: You may submit comments by any of the following methods:

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–055–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–055–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–055–1'' on the subject line.

• Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room. You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the Animal Welfare Act regulations for the humane transportation of animals in commerce by foreign air carriers, contact Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Transportation of Animals on Foreign Air Carriers.

OMB Number: 0579–0247.

Type of Request: Extension of approval of an information collection.

Abstract: The regulations contained in 9 CFR chapter I, subchapter A, part 3, provide standards for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Animal Welfare Act (AWA, 7 U.S.C. 2131 *et seq.*). The regulations in part 3 are divided into six subparts, each of which contains facility and operating standards, animal health and husbandry standards, and transportation standards for a specific category of animals and consist of the following: Subpart A—dogs and cats; subpart B—guinea pigs and hamsters; subpart C—rabbits; subpart D—nonhuman primates; subpart E—marine mammals; and subpart F—warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals. Transportation standards for dogs and cats are contained in §§ 3.13 through 3.19; for guinea pigs and hamsters, in §§ 3.35 through 3.41; for rabbits, in §§ 3.60 through 3.66; for nonhuman primates, in §§ 3.86 through 3.92; for marine mammals, in §§ 3.112 through 3.118; and for all other warmblooded animals, in §§ 3.136 through 3.142.

Foreign air carriers, as well as domestic carriers, transporting animals covered under the AWA to or from any point within the United States, its territories, possessions, or the District of Columbia must comply with the transportation standards and are required to register as a carrier with the Animal and Plant Health Inspection Service and keep and maintain records pertaining to animal transport. These records may include a copy of the consignor's written guarantee of payment for transportation for C.O.D. shipments, a shipping document, an animal health certificate executed and issued by a licensed veterinarian, and, if needed, an acclimation statement indicating that the animal being transported can withstand temperatures colder or warmer than the minimums or maximums specified in the regulations. In addition, depending on the species, the standards may require that instructions for the administration of drugs, medication, other special care, food, and water, as well as other shipping documents, be attached to the outside of the animal's primary enclosure.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for foreign air carriers for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate,

of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.162037 hours per response.

Respondents: Foreign air carriers transporting animals covered under the Animal Welfare Act.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 54.

Estimated annual number of responses: 1,080.

Estimated total annual burden on respondents: 175 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of July 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15493 Filed 7–7–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; Commerce Automated Job Application System

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 7, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Thomas R. Krieder, Computer Specialist, (202) 482–0537, U.S. Department of Commerce, Office of Human Resources Management, IT Group, 14th & Constitution Ave, NW., Room 5004, Washington, DC 20230, or via e-mail to *tkreider@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Commerce automated job application system is a web-based software system that automates the vacancy announcement, application intake, application evaluation, and application referral processes, for positions in the Department of Commerce (DOC).

In the current employment environment qualified job applicants for federal positions are in great demand. The DOC is in direct competition with private industry for the same caliber of candidates with the requisite knowledge and skills to fulfill the mission of the DOC. Consequently, it is imperative that every available technology be employed if the DOC is to remain competitive and meet hiring goals. The information provided by a job applicant will assist the Human Resources Specialists and hiring managers in determining whether an applicant meets the basic qualifications requirements and is best qualified for the position being filled. The job applicant may also voluntarily respond to two surveys. One survey is designed to identify how applicants learned about the job to which they applied. The second survey is to identify their user satisfaction and identify problems/improvements which will make the system more user friendly. The information from both surveys provide data to improve the Commerce recruitment and outreach strategy to attract the best qualified job applicants. In addition, the electronic transmission will expedite the hiring process by reducing the time used in application evaluation, candidate referral and selection, and in the recruitment paperwork distribution/workflow process.

The Commerce automated job application system will provide the DOC with a more user-friendly on-line employment application process and will enable the DOC to process hiring actions in a more efficient and timely manner. The on-line application will provide an electronic real time candidate list that will allow the DOC to review applications from applicants almost instantaneously. Given the immediate hiring needs of the DOC, time consumed in the mail distribution system or paper review of applications delays the decision-making process by several weeks. The continued use of the electronic application will maintain or increase the speed and accuracy in the employment process. It also streamlines labor and reduces costs.

The use of the Commerce automated job application system fully meets the intent of 5 U.S.C. 2301, which requires that Federal personnel management be implemented consistent with merit system principles.

Since the Commerce automated job application system will be used as an alternative form of employment application, the collection and use of the information requires Office of Management and Budget (OMB) approval as outlined in Chapter 4, section A of the Delegated Examining Operations Handbook. The Handbook provides guidance to agencies under a delegated examining authority by the Office of Personnel Management (OPM), under the provisions of 5 U.S.C. 1104.

II. Method of Collection

Application information is collected electronically from the applicant through the Commerce automated job application system. Applicants may contact the DOC Web site on the Internet where they will find the on-line application and can fill out and submit the form electronically while connected to the Web site. Applicants who do not have access to a personal computer are directed to the servicing Human Resources Office for a paper version of the on-line announcement and application.

III. Data

OMB Number: 0690–0019.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, and the Federal Government.

Estimated Number of Respondents: 30,000.

Estimated Time Per Response: On average, the time to complete the on-line application is estimated to be 1 hour. But, depending on the situation, it could take as little as 10 minutes or as long as two hours to complete the on-line application. This is determined by the position for which the applicant is applying, and whether this is the applicant's first application in Commerce automated job application system, or if he or she already has a resume completed in Commerce automated job application system, which automatically fills in approximately 75% of the application's fields.

Estimated Total Annual Respondent Burden Hours: 30,000.

Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 30,2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15457 Filed 7–7–04; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 4 of the 2004 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 7, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 763–3819.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on work schedule, child care, annual income and retirement accounts, and taxes. These supplemental questions are included with the core and are referred to as ''topical modules.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2004 Panel is currently scheduled for 4 years and will include 12 waves of interviewing, which began in February 2004. Approximately 62,000 households were selected for the 2004 Panel, of which, 46,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 97,650 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2004 SIPP Panel during FY 2005. The total annual burden for 2004 Panel SIPP interviews will be 146,475 hours in FY 2005.

The topical modules for the 2004 Panel Wave 4 collect information about:

- Work Schedule
- Child Care
- Annual Income and Retirement Accounts
- Taxes

Wave 4 interviews will be conducted from February 2005 through May 2005. A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews will require an additional 1,553 burden hours in FY 2005.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2004 Panel, respondents are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0905.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 97,650 people per wave.

Estimated Time Per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 148,028.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: July 1, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15456 Filed 7–7–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838, C–122–839]

Certain Softwood Lumber From Canada: Notice of Initiation of Antidumping Duty New Shipper Review for the Period May 1, 2003, Through April 30, 2004, and Notice of Initiation of Countervailing Duty New Shipper Review for the Period January 1, 2003, Through December 31, 2003

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty New Shipper Reviews in Certain Softwood Lumber from Canada.

EFFECTIVE DATE: July 8, 2004.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct new shipper reviews of the antidumping (AD) and countervailing duty (CVD) orders on certain softwood lumber from Canada. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d) (2002), we are initiating AD and CVD new shipper reviews for Seed Timber Co. Ltd (Seed Timber).

FOR FURTHER INFORMATION CONTACT: James Kemp or Constance Handley (AD review) at (202) 482–5346 and (202) 482–0631, respectively; Tipten Troidl or Eric B. Greynolds (CVD review) at (202) 482–1767 and (202) 482–6071, respectively; Group I, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On May 28, 2004, the Department received a timely request from Seed Timber, in accordance with 19 CFR 351.214(d)), for a new shipper review of the AD and CVD orders on certain softwood lumber from Canada, which have a May anniversary month.[1]

As required by 19 CFR 351.214(b)(2)(I) and (iii)(A), Seed Timber certified that it did not export certain softwood lumber to the United States during the period of investigation (POI), and that it has never been affiliated with any exporter or producer which exported certain softwood lumber during the POI.[2] Pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that and subsequent shipments, the date of the first sale to an unaffiliated customer in the United States, and that it has informed the Governments of Canada and British Columbia that they will be required to provide a full response to the Department's questionnaire.[3]

Initiation of Reviews

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on information on the record, we are initiating AD and CVD new shipper reviews for Seed Timber. We intend to issue the preliminary results of these new shipper reviews not later than 180 days after initiation of these reviews. We intend to issue final results of these reviews no later than 90 days after the date on which the preliminary results are issued. *See* 19 CFR 351.214(I).

New shipper review proceeding	Period to be reviewed
Seed Timber Co. Ltd.	05/01/03–04/30/04 (AD).
	01/01/03–12/31/03 (CVD).

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the reviews, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed company in accordance with 19 CFR 351.214(e). Because Seed Timber certified that it both produces and exports the subject merchandise, the sale of which is the basis for these new shipper review requests, we will permit the bonding privilege only with respect to entries of subject merchandise for which Seed Timber is both the producer and exporter.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: June 30, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group 1.

[FR Doc. 04–15540 Filed 7–7–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Certain Softwood Lumber Products from Canada, 67 FR 36068, 36070 (May 22, 2002).

[2] *See* submission from Seed Timber Co. Ltd. to the Department regarding Request for New Shipper Review, case A–122–838, dated May 25, 2004.

[3] *See* submission from Seed Timber Co. Ltd. to the Department regarding Request for New Shipper Review, case C–122–839, dated May 25, 2004.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060704F]

Endangered Species; File No. 1451

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that NMFS, Office of Sustainable Fisheries has been issued a permit to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: On December 1, 2003, notice was published

in the **Federal Register** (68 FR 67152) that a request for a scientific research permit to take loggerhead, leatherback, Kemp's ridley, green and hawksbill sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

This permit authorizes the Permit Holder to handle, photograph, measure, weigh, collect a tissue biopsy from, flipper and Passive Integrated Responder (PIT) tag, and release turtles that have already been captured during the bottom longline fishery. The capture is covered under the incidental take statement issued as part of the Biological Opinion for the Highly Migratory Species Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. The research will contribute to the understanding of the pelagic ecology of sea turtle species, assist in the development of more complete models of their population dynamics, and allow more reliable assessments of commercial fishery impacts.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 1, 2004.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–15545 Filed 7–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061504C]

Endangered Species; File No. 1432

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Jeanette Wyneken, Ph.D., [Principal Investigator], Department of Biological Sciences, Florida Atlantic University, 777 Glades Rd., Boca Raton, FL 33431, has been issued a permit to take loggerhead sea turtles (*Caretta caretta*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 10, 2004, notice was published in the **Federal Register** (69 FR 25882) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Holder is authorized to take up to 30 loggerhead sea turtle hatchlings per site at 10 sites (Onslow Beach, Kiawah Island, Hilton Head Island, Wassaw Island, Melbourne Beach, Hutchinson Island, Juno Beach, Boca Raton, Sanibel/Captiva and vicinity including waters near Ft. Meyers, and Sarasota) for scientific research. Turtles will be captured on the beach under permits issued by the States of North Carolina, South Carolina, Georgia, and Florida, and attached with a ''Witherington Float.'' The turtles will be released at water's edge and followed to determine survivability. Turtles that are not lost to predators will be recaptured, the tether removed and released.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 1, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–15546 Filed 7–7–04; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 15 July 2004 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Frederick J. Lindstrom, Acting Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 28 June 2004.

Frederick J. Lindstrom,

Acting Secretary.

[FR Doc. 04–15541 Filed 7–7–04; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense, Acquisition, Technology, and Logistics/Defense Technical Information Center (DTIC).

ACTION: Notice.

In compliance with Section 3506(C)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense, Acquisition, Technology, and Logistics/Defense Technical Information Center (DTIC), announces the proposed extension of a currently approved collection and seeks public comment on

the provisions thereof. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.

(b) The accuracy of the agency's estimate of the burden of the proposed information collection.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected.

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by: August 31, 2004.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information to DTIC–BC Registration Team, Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218 E-mail comments, submitted via the Internet should be addressed to: *wbush@dtic.mil* at: (703) 767–8213.

FOR FURTHER INFORMATION CONTACT: To request further information about this proposed information collection, or to obtain a copy of the proposal and the associated collection instrument, please write to the above address, or call Mr. William Bush at: (703) 767–8213.

Title, Associated Form, and OMB Number: Registration for Scientific and Technical Information Services, DD Form 1540, OMB Control Number: 07040264.

Needs and Uses: The data that the Defense Technical Information Center handles is controlled, either because of distribution limitations, or security classification. For this reason, all potential users are required to register for service. DOD Instruction 3200.14, Principles and Operational Parameters of the DOD Scientific and Technical Information Program, mandates the registration procedure. Federal Government agencies and their contractors are required to complete the DD Form 1540, Registration for Scientific and Technical Information Services OMB Number: 07040264. The contractor community completes a separate DD Form 1540 for each contract or grant, and registration is valid until the contract expires.

Affected Public: Businesses or other for-profit, small Businesses or organizations, non-profit institutions.

Annual Burden Hours: 833.

Number of Annual Respondents: 2,000.

Annual Responses to Respondent: 1.

Average Burden Per Response: 25 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DOD Scientific and Technical Information Program (STIP) requires the exchange of scientific and technical information within and among federal Government agencies and their contractors. The DD Form 1540 serves as a registration tool for Federal Government Agencies and their contractors to access DTIC services. The Contractors, Subcontractors, and Potential Contractors are required to obtain certification from designated approving officials. Federal Government Agencies need certification from Approving Officials and Security Officers when requesting access to classified and/or data. Collected information is verified by DTIC's Marketing and Registration Division.

Dated: June 30, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–15433 Filed 7–7–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Strategic Strike Skills will meet in closed session on October 6–7, 2004; November 16–17, 2004; December 15–16, 2004; January 12–13, 2005; and February 16–17, 2005; at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the future strategic strike force skills needs of the Department of Defense (DoD).

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Last summer the DSB assessed DoD needs for future strategic strike forces. Assessed was the application of technology for non-nuclear weapons systems, communications, planning systems, and intelligency as well as the integration of strategic strike with active defenses as part of the new triad. This ''skills'' study will complement the previous strategic forces study by focusing on the people and the skills necessary to develop, maintain, plan, and successfully execute future strategic strike forces. At this meeting, the Task Force will: Assess current skills available, both nuclear and non-nuclear of current long-range strike forces; identify, assess and recommend new/modified/enhanced skill sets necessary for successful future strike force development, planning, and operations; and recommend a strategy for the successful evolution of the current skills to those required by future strike forces.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: July 1, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–15436 Filed 7–7–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Munitions System Reliability will meet in closed session on July 8–9, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will review the efforts thus far to improve the reliability of munitions systems and identify additional steps to be taken to reduce the amount of unexploded ordnance resulting from munitions failures. The Task Force will: Conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

The mission of the Defense Science Board is to advise the Secretary of

Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, which further requires publication at least 15 calendar days prior to the meeting.

Dated: June 30, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–15437 Filed 7–7–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Employment of the National Ignition Facility (NIF) met in closed session on July 1–2, 2004, Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA. This Task Force will review the experimental program under development for the National Ignition Facility. NIF is a key component of the National Nuclear Security Administration's (NNSA's) Stockpile Stewardship Program to maintain the nuclear weapons stockpile without nuclear testing. The NIF is a 192-beam laser designed to achieve fusion ignition and produce high-energy-density condition approaching those of nuclear weapons. NNSA and the high-energy-density physics community have developed a plan for activation and early use of NIF which includes a goal to demonstrate ignition by 2010 and also supports high priority, non-ignition experiments required for stockpile stewardship. In this assessment, the task force will assess the proposed ignition and ''non-ignition'' high-energy-density experimental programs at NIF. Review the overall balance and priority of activities within the proposed plan and the degree to which the proposed program of NIF experiments supports the near and long term goals of stockpile stewardship and the overall NIF mission. Assess the potential for NIF to support the design and development of new weapons. Focus on the extent to which major stakeholders in NIF are effectively integrated into the plan.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will assess the proposed ignition and ''non-ignition'' high-energy-density experimental programs at NIF. Review the overall balance and priority of activities within the proposed plan and the degree to which the proposed program of NIF experiments supports the near and long term goals of stockpile stewardship and the overall NIF mission. Assess the potential for NIF to support the design and development of new weapons. Focus on the extent to which major stakeholders in NIF are effectively integrated into the plan.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552(c) (1) and (4) and that, accordingly, these meetings will be closed to the public.

''Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, which further requires publication at least 15 calendar days prior to the meeting.''

Dated: June 30, 2004.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–15438 Filed 7–7 –04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD

ACTION: Notice To Add a System of Records

SUMMARY: The Office of the Secretary of Defense Proposes To Add a System of Records to its Inventory of Record Systems Subject to the Privacy Act of 1974 (5 U.S.C. 552a), as Amended

DATES: The changes will be effective on August 9, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 601–4722, extension 110.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on June 29, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals.' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 30, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DAFIS 01

SYSTEM NAME:

Visual Information Management System (VIMS).

SYSTEM LOCATION:

Primary location: American Forces Information Services, 601 North Fairfax Street, Alexandria, VA 22314–2007.

Secondary location: Defense Media Center, 1363 Z Street, Building 2730 March Air Reserve Base, Riverside, CA 92518–2073.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who uses the VIMS Internet site to order multimedia products.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, rank, branch of military service, organization, mailing address, work and home telephone numbers, fax number, e-mail address, and order information such as what item was ordered, when the order was placed, when the order was sent out, and if the item was delivered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense; 5 U.S.C. 301, Departmental Regulations; DoD Directive 5122.10, American Forces Information Service (AFIS); DoD Directive 5040.2, Visual Information (VI); DoD Directive 5040.3, DoD Joint Visual Information Services; and DoD Directive 5040.4, Joint Combat Camera (COMCAM) Program.

PURPOSE(S):

The VIMS system is a digital visual information management system that will store, manage, and distribute multimedia products for sale over an Internet site. The individual's information is being collected and maintained so that their orders can be processed, verified, and tracked.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data will be stored on paper and on electronic medium.

RETRIEVABILITY:

Information retrieved by individual's name.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, or administrative procedures. Access to records is limited to those officials who require the records to perform their official duties consistent with the purpose for which the information was collected. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information. Access to computerized data is restricted by passwords, which are changed periodically. Computer terminals are located in supervised areas with access control.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves the retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

VIMS Program Manager, Defense Visual Information, 601 North Fairfax Street, Alexandria, VA 22314–2007.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the VIMS Program Manager, Defense Visual Information, 601 North Fairfax Street, Alexandria, VA 22314–2007.

Requests should contain full name, address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system of records should address written inquiries to the VIMS Program Manager, Defense Visual Information, 601 North Fairfax Street, Alexandria, VA 22314–2007.

Requests should contain full name, address, and telephone number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual customer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–15440 Filed 7–7–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Air Force is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The alteration expands the category of individuals covered to include 'foreign military personnel, civilians, faculty and staff', and expands the categories of records maintained to include 'aero rating, flying status, and equipment issue'.

DATES: This proposed action will be effective without further notice on August 9, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 696–6280.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 29, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 30, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC R

SYSTEM NAME:

Student Records (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Replace entry with 'F036 AF AETC A'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Replace entry with 'Military personnel, foreign military personnel, and civilians assigned to the centers or schools as students, faculty and staff.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Replace entry with 'Student records which may include but are not limited to name, rank, Social Security Number, branch of service, AFSC or equivalent, date of birth, education level, aero rating, aircraft type, flying status, gender, type of commission, commissioning date, student identification number, class number, student computer login, phone number, final grade, permanent and/or temporary duty location, assigned instructors, certificates, and equipment issue.'

* * * * *

SAFEGUARDS:

Add to entry 'Computer records are protected by computer system software.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Student grade books and training review board records are destroyed one year after completion of training; summary training records are retained in office files for two years after completion or discontinuance of course; other records are retained in office files until superseded, obsolete, no longer needed for reference or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.'

* * * * *

RECORD SOURCE CATEGORIES:

Replace entry with 'Information obtained from students, staff, correspondence generated within the agency in the conduct of official business, educational institutions, and civil authorities.'

* * * * *

F036 AF AETC A

SYSTEM NAME:

Student Records.

SYSTEM LOCATION:

Professional Military Education Centers, NCO Academies and schools at Air Force Major Commands and bases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, foreign military personnel, and civilians assigned to the centers or schools as students, faculty and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student records which may include but are not limited to name, rank, Social Security Number, branch of service, AFSC or equivalent, date of birth, education level, aero rating, aircraft type, flying status, gender, type of commission, commissioning date, student identification number, class number, student computer login, phone number, final grade, permanent and/or temporary duty location, assigned instructors, certificates, and equipment issue.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2201, Air Force Training Program; and E.O. 9397 (SSN).

PURPOSE(S):

Used as a record of attendance and training, class standing, completion or elimination, as locator, supply issue, and as a source of statistical information.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files, and on computer and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are stored in security file containers/cabinets or rooms. Records are accessed by the custodian of the system or persons responsible for maintenance of the records in course of their official duties. Computer records are protected by computer system software.

RETENTION AND DISPOSAL:

Student grade books and training review board records are destroyed one year after completion of training; summary training records are retained in office files for two years after completion or discontinuance of course; other records are retained in office files until superseded, obsolete, no longer needed for reference or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent for PME at each Major Command, commandant at each academy or leadership school or director or personnel at each base where a school is located. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Superintendent of PME at each Major Command, commandant at each academy or leadership school or director of personnel at each base where a school is located. Official mailing addresses are published as an appendix to the Air Force's compilation or of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Superintendent for PME at each Major Command, commandant at each academy or leadership school or director of personnel at each base where a school is located. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from students, staff, correspondence generated within the agency in the conduct of official business, educational institutions, and civil authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–15439 Filed 7–7–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Jack Assembly for Supporting a Shelter Structure

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,753,024 B2 entitled ''Method for Making a Food Preservative and for Preserving Food'' issued June 22, 2004. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–15485 Filed 7–7–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information Student Support Services (SSS) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.042A.

Dates: Applications Available: July 20, 2004.

Deadline for Transmittal of Applications: August 31, 2004.

Deadline for Intergovernmental Review: September 7, 2004.

Eligible Applicants: Institutions of higher education or combinations of institutions of higher education.

Estimated Available Funds: The Administration has requested $266,557,000 for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $220,000–$350,000.

Estimated Average Size of Awards: $280,000.

Maximum Award: We will not fund any application at an amount exceeding the maximum amounts specified below for a single budget period of 12 months. All successful applicants will be required to meet all of the goals and objectives proposed in their applications regardless of whether those proposed goals and objectives were based on budgets that exceeded the maximum amounts.

- For an applicant who is not currently receiving a SSS Program grant, the maximum award amount is—$220,000 for a project that will serve a minimum of 160 student participants; $220,000 for a project that will serve only individuals with disabilities; and $170,000 or an amount equal to $1,375 per student participant, whichever is greater, for a project that will serve less than 160 student participants.
- For an applicant who is currently receiving a SSS Program grant the maximum award amount is—the greater of (a) $220,000, or (b) an amount equal to 103 percent of the applicant's prior grant award amount for FY 2003 or FY 2004. For applicant institutions of higher education who received individual grants in the last competition and have since merged into one institution the maximum award amount is—an amount equal to 103 percent of either their combined FY 2003 grant award amounts or their combined FY 2004 grant award amounts, whichever is greater. The Assistant Secretary for Postsecondary Education may increase the maximum grant award to current SSS Program grantees to an amount equal to 105 percent of either their FY 2003 or FY 2004 grant award amount, whichever is greater, without further notice. The Assistant Secretary may increase the maximum grant award to more than 105 percent through a notice published in the **Federal Register**.

Estimated Number of Awards: 975.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

I. Funding Opportunity Description

Purpose of Program: The purpose of the SSS Program is to increase the number of disadvantaged low-income college students, first generation college students, and college students with disabilities in the United States who successfully complete a program of study at the postsecondary level of education. The support services provided should increase their retention and graduation rates, facilitate their transfer from two-year to four-year colleges, and foster an institutional climate supportive of their success.

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–14.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 646.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $266,557,000 for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $220,000–$350,000.

Estimated Average Size of Awards: $280,000.

Maximum Award: We will not fund any application at an amount exceeding the maximum amounts specified below for a single budget period of 12 months. All successful applicants will be required to meet all of the goals and objectives proposed in their applications regardless of whether those proposed goals and objectives were based on budgets that exceeded the maximum amounts.

- For an applicant who is not currently receiving a SSS Program grant, the maximum award amount is—$220,000 for a project that will serve a minimum of 160 student participants; $220,000 for a project that will serve only individuals with disabilities; and $170,000 or an amount equal to $1,375 per student participant, whichever is greater, for a project that will serve less than 160 student participants.
- For an applicant who is currently receiving a SSS Program grant the maximum award amount is—the greater of (a) $220,000, or (b) an amount equal to 103 percent of the applicant's prior grant award amount for FY 2003 or FY 2004. For applicant institutions of higher education who received individual grants in the last competition and have since merged into one institution the maximum award amount

is—an amount equal to 103 percent of either their combined FY 2003 grant award amounts or their combined FY 2004 grant award amounts, whichever is greater. The Assistant Secretary for Postsecondary Education may increase the maximum grant award to current SSS Program grantees to an amount equal to 105 percent of either their FY 2003 or FY 2004 grant award amount, whichever is greater, without further notice. The Assistant Secretary may increase the maximum grant award to more than 105 percent through a notice published in the **Federal Register**.

Estimated Number of Awards: 975.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education or combinations of institutions of higher education.

2. *Cost Sharing or Matching:* Section 402D of the Higher Education Act of 1965, as amended (HEA), requires that all successful applicants that use SSS Program funds for the grant-aid-to-students component must provide matching funds, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of SSS Program funds used for grant-aid-to-students. This matching requirement does not apply to a grant recipient that is eligible to receive funds under part A or part B of Title III or under Title V of the HEA.

3. *Other:* An applicant may submit more than one application if each, separate application describes a project that will serve a different campus, as defined in the program regulations, 34 CFR 646.7(c). Also, an applicant may submit more than one application if each, separate application describes a project that will serve a different population of participants: *For example*, individuals with disabilities, who cannot readily be served by a single project. For each additional application, the applicant must submit a justification as to why the different population of participants cannot be served by a single project.

IV. Application and Submission Information

1. *Address to Request Application Package:* Deborah I. Walsh or Dorothy Marshall, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: You must limit the narrative part of your application—Part II—First Year Budget Narrative and Part III—Program Narrative—to no more than 75 pages using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application, including titles, headings, footnotes, quotations, references, and captions; however, you may single space all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the application face sheet (ED 424); Part I–A, the SSS Program profile and one-page abstract; the budget summary form (ED 524); Parts IV and VI, the assurances and certifications; and Part V, the prior experience form.

No appendices or attachments should be included with the application. If you include any attachments or appendices, these items will be counted as part of the Program Narrative for purposes of the page limit requirement.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 20, 2004.

Deadline for Transmittal of Applications: August 31, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 7, 2004.

4. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 646.31. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants under the SSS Program—CFDA Number 84.042A, be submitted electronically using e-Application available through the Department of Education's e-Grants system. The e-Grants system is accessible through its portal page at: *http://e-grants.ed.gov*.

If you are unable to submit an application through the e-Grants system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Linda Byrd-Johnson, Ph.D., U.S. Department of Education,

1990 K Street, NW., room 7085, Washington, DC 20006–8510. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The SSS Program—CFDA Number 84.042A, is one of the programs included in the pilot project. If you are an applicant under the SSS Program—CFDA Number 84.042A, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2.The institution's Authorizing Representative must sign this form.

3.Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contacts) or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the SSS Program at: *http://e-grants.ed.gov*.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program competition are in 34 CFR 646.21 and the application package.

Note: Under the ''Objectives'' selection criterion, 34 CFR 646.21(b), applicants should address the core objectives related to the participants' academic achievements, including retention and graduation. Applicants also should note that objectives must be measured by cohorts of students who become SSS Program participants in each year of the project, and that multi-layered and tiered objectives are not acceptable. The application package contains specific instructions.

2. *Review and Selection Process:* The Secretary will select an application for funding in rank-order, based on the application's total score for the selection criteria and prior experience, pursuant to 34 CFR 646.20 through 646.22. If there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the SSS Program.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project, you must submit a final performance report including financial information as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditures information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The success of the SSS Program will be measured by the postsecondary persistence and degree completion rates of SSS Program participants that remain at the grantee institution. All SSS Program grantees will be required to submit an annual performance report documenting the persistence and degree attainment of their participants. Since students may take different lengths of time to complete their degrees, multiple years of performance report data are needed to determine the degree completion rates of SSS Program participants. The Department will aggregate the data provided in the annual performance

reports from all grantees to determine the accomplishment level.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Deborah I. Walsh or Dorothy Marshall, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: TRIO@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.htm.*

Dated: July 2, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 04–15471 Filed 7–7–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Overview Information; Smaller Learning Communities (SLC) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003—Second Competition

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215L.

Dates:

Applications Available: July 8, 2004.

Deadline for Transmittal of Applications: August 9, 2004.

Deadline for Intergovernmental Review: September 7, 2004.

Eligible Applicants: Local educational agencies (LEAs), including schools funded by the Bureau of Indian Affairs (BIA schools), applying on behalf of large public high schools are eligible. For purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above. Additional information regarding applicant eligibility requirements is provided elsewhere in this notice in Section III. Eligibility Information, 1. *Eligible Applicants.*

Estimated Available Funds: $73,000,000.

Estimated Range of Awards: See chart under Section II. Award Information.

Estimated Number of Awards: 10 Planning Grants and 35 Implementation Grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months for Planning Grants and up to 36 months for Implementation Grants.

Full Text of Announcement

I. Funding Opportunity Description

Description of Program: This competition is the second competition run by the Department of Education for FY 2003 Smaller Learning Communities Program funds. The Department made awards from the first competition in early July 2004. At that time, applicants that were not awarded funding were also notified. We encourage applicants that applied in the first competition and did not receive funding to revise their applications and to reapply in this competition. All other eligible applicants are also encouraged to apply. LEAs that were successful in the first 2003 competition or in previous competitions may apply, but must abide by the requirements of section III of this notice in determining what high schools they may serve under this competition.

Purpose of Program: The purpose of the Smaller Learning Communities Program is to promote academic achievement through the planning, implementation or expansion of small, safe, and successful learning environments in large public high schools to help ensure that all students graduate with the knowledge and skills necessary to make successful transitions to college and careers.

Priorities: These priorities are from the notice of final requirements, priorities and selection criteria for this program, published in the **Federal Register** on March 15, 2004 (69 FR 12254).

Absolute Priorities: For FY 2003 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Absolute Priority 1: Helping All Students To Succeed in Rigorous Academic Courses (Planning Grants)

This priority will support projects that will develop a plan to create or expand a smaller learning community program that will implement a coherent set of strategies and interventions that are designed to ensure that all students who enter high school with reading/language arts and mathematics skills that are significantly below grade level ''catch up'' quickly so that, by no later than the end of the 10th grade, they acquire the reading/language arts and mathematics skills they need to participate successfully in rigorous academic courses that will equip them with the knowledge and skills necessary to transition successfully to postsecondary education, an apprenticeship, or advanced training.

These accelerated learning strategies and interventions must:

(1) Be grounded in the findings of scientifically based and other rigorous research;

(2) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(3) Provide additional instruction and academic support during the regular school day, which may be supplemented by instruction that is provided before of after school, on weekends, and at other times when school is not in session; and

(4) Provide sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction.

Absolute Priority 2: Helping All Students To Succeed in Rigorous Academic Courses (Implementation Grants)

This priority will support projects that will implement a coherent set of strategies and interventions that are designed to ensure that all students who enter high school with reading/language arts or mathematics skills that are significantly below grade level ''catch up'' quickly so that, by no later than the end of the 10th grade, they acquire the reading/language arts and mathematics skills they need to participate successfully in rigorous academic courses that will equip them with the knowledge and skills necessary to transition successfully to postsecondary

education, an apprenticeship, or advanced training.

These accelerated learning strategies and interventions must:

(1) Be grounded in the findings of scientifically based and other rigorous research;

(2) Include the use of age-appropriate instructional materials and teaching and learning strategies;

(3) Provide additional instruction and academic support during the regular school day, which may be supplemented by instruction that is provided before or after school, on weekends, and at other times when school is not in session; and

(4) Provide sustained professional development and ongoing support for teachers and other personnel who are responsible for delivering instruction.

Program Authority: 20 U.S.C. 7249.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99; and (b) the requirements, priorities and selection criteria contained in the notice of final requirements, priorities, and selection criteria published in the **Federal Register** on March 15, 2004 (69 FR 12254).

Note: The regulations in part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary Planning Grants and Implementation Grants.

Estimated Available Funds: $73,000,000.

Estimated Range of Awards: The Secretary will award both planning and implementation grants under this competition.

A. *Planning Grants.* The amount of an award for a planning grant is based on the number of schools the applicant proposes to serve. For a one-year planning grant, LEAs may receive, on behalf of a single school, $25,000 to $50,000 per project. LEAs applying on behalf of a group of eligible schools may receive up to $250,000 per planning grant depending on the number of schools included in the application. LEAs must stay within the maximum school allocations when determining their group award request. Therefore, in order to ensure sufficient planning funds at the local level, LEAs may not request funds for more than 10 schools under a single application.

The chart below provides the ranges of awards for planning grants:

Number of schools	Award ranges
One School	$25,000–$50,000
Two Schools	$50,000–$100,000
Three Schools	$75,000–$150,000
Four Schools	$100,000–$200,000
Five Schools	$125,000–$250,000
Six Schools	$150,000–$250,000
Seven Schools	$175,000–$250,000
Eight Schools	$200,000–$250,000
Nine Schools	$225,000–$250,000
Ten Schools	$250,000

B. *Implementation Grants.* The amount of an award for an implementation grant is based on the enrollment of the schools the applicant is proposing to serve. For a three-year implementation grant, LEAs may receive, on behalf of a single school, $250,000 to $550,000, depending upon the size of the school. LEAs applying on behalf of a group of eligible schools may request up to $5,500,000 per implementation grant. As with planning grants, LEAs must stay within the maximum school allocations when determining their group award request, or they will be declared ineligible and their applications will not be read. In order to ensure sufficient funds are available to support implementation activities, LEAs may not request funds for more than 10 schools under a single application for an implementation grant.

The chart below provides the ranges of awards for implementation grants:

Student enrollment	Award ranges per school
1,000–1,500	$250,000–$300,000
1,501–2,000	$250,000–$400,000
2,001–2,500	$250,000–$450,000
2,501–3,000	$250,000–$500,000
More than 3,000	$250,000–$550,000

Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, the Secretary anticipates awarding the entire amount for an implementation grant at the time of the initial award. The award ranges provided are for the three-year grant period, not for each year of the grant.

Note: The Department will fund only those applications that correctly request funds within the maximum award ranges specified in this notice for both planning and implementation grants. Applicants requesting funding in amounts higher than the award ranges dictated by the number of schools or the enrollment of the schools to be served will be declared ineligible and their applications will not be read. However, an applicant may request an amount lower than the suggested minimum for an individual school or for the overall grant based on the pertinent number of schools.

Estimated Number of Awards: 10 Planning Grants and 35 Implementation Grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months for Planning Grants and up to 36 months for Implementation Grants.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including BIA schools, applying on behalf of large public high schools are eligible. For purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

We do not permit an LEA to apply on behalf of a high school for which it does not have governing authority, such as a high school in a neighboring school district. An LEA, however, may form a consortium with another LEA and submit a joint application for funds. They must follow the procedures for group applications described in 34 CFR 75.127–75.129 in EDGAR.

In this competition, an LEA may submit only one planning grant application and one implementation grant application and must specify in each application the high schools it intends to serve. An LEA may apply for only one planning grant and one implementation grant whether the LEA applies independently or as part of a consortium application. Additionally, an LEA may not apply for both a planning and implementation grant on behalf of the same high school. A single high school may only be included in either the LEA's planning grant application or its implementation grant application, but not both.

Applicants pursuing planning grant funds must not yet have developed a viable plan for creating smaller learning communities in the school(s) that will be served by the grant. To apply for implementation grant funds, applicants must be prepared to implement a new smaller learning communities program within each targeted high school, or to expand an existing smaller learning communities program. The first year of implementation grant funds is not to be used for planning purposes.

Schools that received funding through planning grants in previous competitions are not eligible to receive support through additional planning grants under this competition or future competitions. Schools that received funding through implementation awards in previous competitions are not eligible to receive additional support under this competition or future competitions.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Deborah Williams, U.S. Department of Education, OVAE, 400 Maryland Avenue, SW., PCP room 11033, Washington, DC 20202–7241. Telephone: (202) 245–7770. Fax: (202) 245–7170.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

You may also obtain an application package via Internet from the following address: *www.ed.gov/programs/slcp/applicant.html*.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* To be considered for funding, LEAs must identify in their applications the name(s) of the eligible schools(s) and the number of students enrolled in each school. Enrollment figures must be based upon data from the current school year or data from the most recently completed school year. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application. Applicants must clearly identify the proposed grant-funded smaller learning communities in their application. Additional requirements concerning the content of an application are in the notice of final requirements, priorities and selection criteria for this program, published in the **Federal Register** March 15, 2004 (69 FR 12554). These requirements, together with the forms you must submit, also are in the application package for this competition.

3. *Submission Dates and Times: Applications Available:* July 8, 2004.

Deadline for Transmittal of Applications: August 9, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 7, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the notice of final requirements, priorities, and selection criteria published in the **Federal Register** on March 15, 2004 (69 FR 12254) and in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

Note: The requirements listed in this notice are material requirements. A failure to comply with any applicable program requirement (for example, failure to show improvement on the required performance indicators by the end of the first year of implementation) may subject a grantee to administrative action, including but not limited to designation as a ''high-risk'' grantee, the imposition of special conditions or termination of the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary requires applicants for implementation grants to identify in their application specific performance indicators and annual performance objectives for each of these indicators. Specifically, applicants are required to use the following performance indicators to measure the progress of each school:

1. The percentage of students who scored at the proficient and advanced levels on the reading/language arts and mathematics assessments used by the State to measure adequate yearly progress under part A of title I of ESEA, disaggregated by subject matter and the following subgroups:

a. All students;

b. Major racial and ethnic groups;

c. Students with disabilities;

d. Students with limited English proficiency; and

e. Economically disadvantaged students.

2. The school's graduation rate, as defined in the State's approved accountability plan for part A of title I of ESEA;

3. The percentage of graduates who enroll in postsecondary education, apprenticeships, or advanced training for the semester following graduation; and

4. The percentage of graduates who are employed by the end of the first quarter after they graduate (*e.g.*, for students who graduate in May or June, this would be September 30).

In addition to the four required indicators listed above, applicants may choose to set performance levels for other appropriate indicators; such as:

1. Rates of average daily attendance and year-to-year retention;

2. Achievement and gains in English proficiency of limited English proficient students;

3. The incidence of school violence, drug and alcohol use, and disciplinary actions;

4. The percentage of students completing advanced placement courses, and the rate of passing advanced placement tests (such as Advanced Placement, International Baccalaureate, and courses for college credit); and

5. The level of teacher, student, and parent satisfaction with the Smaller Learning Communities structures and strategies being implemented.

Applicants for implementation grants are required to include in their

applications their most recent School Report Card. Upon being awarded, recipients of implementation grants will be required to provide baseline data responding to each of these indicators for the three years preceding the baseline year. Specific instructions will be sent from us to grant recipients. Recipients of implementation grants will be required to report annually on the extent to which each school achieved its performance objectives for each indicator during the preceding school year. Additionally, implementation grantees will have to submit a final Annual Performance Report at the end of the fourth year of implementation. We require grantees to include in these reports comparable data, if available, for the preceding three school years so that trends in performance will be more apparent.

VII. Agency Contact

For Further Information Contact: Deborah Williams, U.S. Department of Education, 400 Maryland Avenue, SW., PCP room 11033, Washington, DC 20202–7241. Telephone: (202) 245–7770 or by e-mail: *deborah.williams@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: July 1, 2004.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 04–15542 Filed 7–7–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the schedule and a summary of the agenda for an upcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This notice is published less than 15 days prior to the date of the meeting due to unexpected delays in finalizing arrangements for the meeting.

DATE AND TIME: July 14, 2004, 9 a.m. to 3 p.m.

ADDRESSES: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036. Telephone: (202) 530–3600.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544; telephone (202) 502–7500; e-mail *donald.fischer@ed.gov.*

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in the preceding paragraph as soon as possible.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 742 of the Higher Education Act of 1965 (20 U.S.C. 1138a). The Board is authorized to advise the Director of the Fund and the Assistant Secretary for Postsecondary Education on (1) priorities for the improvement of postsecondary education, including recommendations for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice; and (2) the operation of the Fund, including advice on planning documents, guidelines, and procedures for grant competitions prepared by the Fund.

On Monday, July 14, 2004, from 9 a.m. to 3 p.m., the Board will meet in open session. The proposed agenda for the meeting will include discussions of the Fund's programs and special initiatives. A special presentation will be made on a US-Brazil Consortia Program project. A special topic of discussion will be Congressionally directed grants.

Records are kept of all Board proceedings and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 6th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Wilbert Bryant,

Deputy Assistant Secretary for Higher Education Programs Office of Postsecondary Education.

[FR Doc. 04–15537 Filed 7–7–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, and 84.268]

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, and William D. Ford Federal Direct Loan Programs

ACTION: Correction; notice of deadline dates for receipt of applications, reports, and other records for the 2003–2004 award year.

SUPPLEMENTARY INFORMATION: On March 10, 2004, we published a notice in the **Federal Register** (69 FR 11403) announcing the deadline dates for the receipt of documents and other information from institutions and applicants for the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended, for the 2003–2004 award year. The Federal student aid programs include the Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership programs.

Under ''Table A. *Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or*

Institutional Student Information Records (ISIRs) by Institutions'', (69 FR 11405), we are correcting the information in row 7 for a student making paper corrections using a SAR. Under the column titled, ''What is Submitted?'', we are correcting the text to read ''Paper corrections (including change of mailing and email addresses, institutions, or requests for a duplicate SAR) using a SAR''. Under the column titled, ''Where is it Submitted?'', we are correcting the text to read ''To the address printed on the SAR''. Under the column titled, ''What is the Deadline Date for Receipt?'', we are correcting the date to read ''September 7, 2004''.

FOR FURTHER INFORMATION CONTACT: Harold McCullough, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 93B2, Washington, DC 20202–5345. Telephone: (202) 377–4030.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

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You may also view this document in PDF at the following site: *http://www.ifap.ed.gov.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 421–429, 1070a, 1070b–1070b–3, 1070c–1070c–4, 1071–1087–2, 1087a, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: July 1, 2004.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 04–15472 Filed 7–7–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice: Additional Item for Discussion at Meeting.

DATE & TIME: Tuesday, July 13, 2004 at 1 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York, Ave., NW., Suite 1100, Washington, DC 20005 (Metro Stop: Metro Center).

STATUS: This meeting will be open to the public.

SUMMARY: In addition to the items previously published June 29, 2004, the Commission will also receive an update on The Help America Vote College Program.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

DeForest B. Soaries, Jr.,

Chairman, U.S. Election Assistance Commission.

[FR Doc. 04–15671 Filed 7–6–04; 3:26 pm]

BILLING CODE 6820–MP–M

DEPARTMENT OF ENERGY

Office of Science

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, August 2, 2004; 8:30 a.m. to 5 p.m.

ADDRESSES: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852–1699.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–90/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–0536.

SUPPLEMENTARY INFORMATION: Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following: Monday, August 2, 2004.

- Perspectives from Department of Energy and National Science Foundation.
- Presentation and Discussion on the Interim Report from the Sub-Committee on Education.
- Presentation and Discussion on the Interim Report from the Sub-Committee on Heavy Ion Nuclear Physics.
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC., between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 1, 2004.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 04–15522 Filed 7–7–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–366–000]

Gulf South Pipeline Company, L.P.; Notice of Application

June 30, 2004.

Take notice that on June 22, 2004, Gulf South Pipeline Company, L.P.

(Gulf South), 20 East Greenway, Houston, Texas 77046, filed in Docket No. CP04–366–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct, own and operate up to 5 injection/withdrawal storage wells, associated wellhead measurement facilities, appurtenant and auxiliary facilities; and 2.34 miles of 8-inch and 16-inch storage pipeline at the Jackson Gas Storage Facility in Rankin County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676, or TTY, (202) 502–8659.

Any questions regarding this application should be directed to J. Kyle Stephens, Director of Certificates, Gulf South Pipeline Company, L.P., 20 East Greenway Plaza, Houston, Texas 77046, Phone: (713) 544–7309, Fax: (713) 544–4818, or Email: *kyle.stephens@gulfsouthpl.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: July 21, 2004.

Magalie Salas,

Secretary.

[FR Doc. E4–1491 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–034]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

June 30, 2004.

Take notice that on June 26, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8.01c, reflecting an effective date of July 1, 2004.

Gulfstream states that this filing is being made in connection with a negotiated rate transaction pursuant to section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream states that Original Sheet No. 8.01c identifies and describes the negotiated rate transaction, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract terms, and the contract quantity. Gulfstream also states that Original Sheet No. 8.01c includes footnotes where necessary to provide further details on the transaction listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1498 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–140]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Agreement

June 30, 2004.

Take notice that on June 28, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and acceptance an original and five copies of a Gas Transportation Agreement between Tennessee and Keyspan Energy Delivery Long Island pursuant to Tennessee's Rate Schedule FT–A and a Negotiated Rate Letter Agreement (Negotiated Rate Arrangement). Tennessee requests that the Commission accept and approve the Negotiated Rate Agreement to be effective on November 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1489 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–345–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 30, 2004.

Take notice that on June 25, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets in Appendix A attached to the filing, with an effective date of August 1, 2004.

Transco states that the purpose of the instant filing is to eliminate the GRI surcharge rates from its tariff effective August 1, 2004.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1499 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–448–003, et al.]

El Paso Electric Company, et al.; Electric Rate and Corporate Filings

June 29, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. El Paso Electric Company

[Docket No. ER04–448–003]

Take notice that on June 24, 2004, El Paso Electric Company (EPE), submitted Second Revised Sheet Nos. 182, 187 and 280 to EPE's FERC Electric Tariff, Third Revised Volume No. 1, in compliance with the Commission's order issued June 4, 2004 in Docket No. ER04–442–000, *et al.*, 107 FERC ¶ 61,255. EPE requests an effective date of April 26, 2004.

Comment Date: July 15, 2004.

2. Vermont Electric Cooperative, Inc.

[Docket No. ER04–694–001]

Take notice that on May 25, 2004, Vermont Electric Cooperative, Inc. (VEC) tendered for filing an amendment to its March 31, 2004, application for market-based rate authority in Docket No. ER04–694–000.

Comment Date: July 9, 2004.

3. Allied Energy Resources Corporation

[Docket No. ER04–923–001]

Take notice that on June 24, 2004, Allied Energy Resources Corporation (AERC) filed an amendment to its June 14, 2004, petition for acceptance of AERC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: July 15, 2004.

4. Ritchie Energy Products, L.L.C.

[Docket No. ER04–954–000]

Take notice that on June 24, 2004, Ritchie Energy Products, L.L.C. (Ritchie Energy) filed with the Commission a Notice of Succession pursuant to sections 35.16 and 131.51 of the Commission's regulations, 18 CFR 35.16 and 131.51. Ritchie Energy states that as a result of a name change, Ritchie Energy is succeeding to the FERC Electric Rate Schedule of RAM Energy Products, L.L.C., effective May 27, 2004.

Comment Date: July 16, 2004.

5. New York State Electric & Gas Corporation

[Docket No. ER04–962–000]

Take notice that on June 25, 2004, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's Regulations, to Rate Schedule 200 a Facilities Agreement between NYSEG and the New York Power Authority (NYPA). NYSEG requests an effective date of September 1, 2004.

NYSEG states that copies of the filing have been served upon the NYPA and the Public Service Commission of the State of New York.

Comment Date: July 16, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1488 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–334–000]

CenterPoint Energy—Mississippi River Transmission Corp.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Abandonment of the Mrt Main Line No. 1 Pipeline and Request for Comments on Environmental Issues

June 30, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed abandonment by CenterPoint Energy—Mississippi River Transmission Corp. (MRT) of 307 miles of 22-inch-diameter pipeline, and 2 associated compressor stations. The facilities which would be abandoned consist of the MRT Main Line No. 1 running from Perryville, Louisiana, across the state of Arkansas to Poplar Bluffs, Missouri.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice MRT provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

MRT seeks authority to abandon approximately of 307 miles of pipeline of which about 277.5 miles would be abandoned in place. MRT would abandon by sale 18.3 miles of pipeline running from its Glendale Compressor Station to the town of Pine Bluff, Arkansas. The 18.3-mile segment of pipe would be sold to CenterPoint Energy Gas Transmission Company which would continue service to the town of Pine Bluff.

MRT states that it contacted all landowners along its Main Line No. 1 and received a number of requests that the abandoned pipe be removed. Segments planned for removal at landowner request currently total 11.2 miles.

Mainline No. 1 shares an easement with MRT's Mainlines No. 2 and 3 (which will remain in service). MRT would retain its current pipeline easement.

MRT also proposes to abandon 2 obsolete compressor stations, the Diaz and Sherrill Compressor Stations in (respectively) Jackson and Jefferson Counties, Arkansas. All buildings and structures would be removed except for two small communications sheds at the Diaz facility.

Above ground appurtenant facilities which would be removed include valves and vents at 78 sites, crossover pipes at 23 sites, and a back up interconnection to Natural Gas Pipeline Company of America.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Abandonment

The Main Line No. 1 abandonment would require excavation at 167 work areas (including the compressor stations). MRT's work would disturb 306.5 acres within MRT's existing ROW and facility yards. MRT would retain the Main Line No. 1 easement after the Main Line No. 1 pipeline is abandoned. MRT would use existing access roads and plans no new or permanently improved roads.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State

[1] MRT's application was filed with the Commission under Section 7(b) of the Natural Gas Act and Part 157 of the Commission(s regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission(s Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction activities associated with the removal of the pipeline under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission(s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section.

Currently Identified Environmental Issues

The Bald Knob National Wildlife Refuge and Missouri's Sand Pond Conservation Area are crossed by Main Line No. 1 and the pipeline is within a quarter mile of Arkansas' Stateline Sandponds Natural Area. MRT is coordinating its proposed abandonment action with the appropriate wildlife area managers.

The project would cross or is within a quarter mile of three designated natural or scenic areas: Bayou Bartholomew (Louisiana Natural Scenic River); Trail of Tears National Historic Trail (in Arkansas); and the Black River (Arkansas Natural and Scenic River).

Twelve single family residences and a motel are located within 50 feet of Mainline No. 1.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP04–334–000.
- Mail your comments so that they will be received in Washington, DC on or before July 30, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its paper filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission(s Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

FR Doc. E4–1490 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–114–000]

Compass Pass Pipeline LLC; Notice of Intent To Prepare an Environmental Impact Assessment for the Proposed Compass Pass Pipeline Project and Notice of Site Visit

June 30, 2004.

The Federal Energy Regulatory Commission (FERC or Commission) will participate in the preparation of an environmental impact assessment (EIS) that will discuss the environmental impacts of the Compass Port deepwater port and the associated Compass Pass Pipeline Project involving construction and operation of facilities by Compass Pass Pipeline LLC (Compass Pass) in Mobile County, Alabama.[1] These facilities would consist of about 5 miles of onshore 36-inch-diameter pipeline. The onshore portion of the pipeline is the only part of the project under FERC jurisdiction. This EIS will be used by the Commission in its decision-making process to determine whether its portion of the project is in the public convenience and necessity.

On June 25, 2004, the U.S. Coast Guard (USCG) issued a notice of intent in the **Federal Register** to prepare an EIS for the Compass Port deepwater port, notice of public meeting, and request for public comments. Compass Port includes the deepwater port liquefied natural gas (LNG) facility located 26 miles offshore, 26 miles of 36-inch-diameter pipeline, and the Compass Pass Pipeline. Compass Pass, a wholly owned subsidiary of ConocoPhillips Company (Conoco Phillips), filed an application on March 29, 2004, with the U.S. Department of Transportation's Maritime Administration (Maritime Administration) for construction and operation of the Compass Port deepwater port and associated Compass Pass Pipeline. Pursuant to the Deepwater Port Act of 1974, as amended, jurisdiction over deepwater natural gas ports is vested in the Department of Transportation's Maritime Administration and the Department of Homeland Security. The USCG is preparing an EIS, as the lead agency, for the entire project including the onshore Compass Pass Pipeline. The FERC, as a cooperating agency, will provide documentation and review to support the preparation of applicable sections of the USCG EIS.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice CompassPass provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Compass Pass wants to connect the Compass Port offshore pipeline to three downstream interstate natural pipelines to transport approximately 1.5 billion cubic feet per day of regasified LNG from the Compass Port deepwater port. The Compass Port deepwater port would receive, store, and regasify LNG for transport to the combined offshore/onshore pipeline. Additional proposed facilities for the Compass Pass Pipeline include a valve station, a meter station, flow valves, a receiving station with pig receiver, two short 16-inch-diameter laterals with meters and flow valves, and interconnect facilities to the three existing natural gas pipelines.

The general location of the project facilities is shown in appendix 1.

Land Requirements for Construction

Construction of the proposed onshore facilities would require about 79 acres of land, of which 33 acres would be new permanent right-of-way (ROW) easement after construction. Virtually all construction would occur adjacent to previously disturbed ROW.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the onshore pipeline related issues the Commission is required to address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will contain evaluations of possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

To ensure your comments to the Commission are considered, please carefully follow the instructions in the public participation section beginning on the next page.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Compass Pass Pipeline. This preliminary list of issues may be changed based on your comments and our analysis. The onshore pipeline would

- Cross seven waterways ranging in width from 5–22 feet;
- Disturb fifty-two acres of wetland, including coastal marsh habitat;
- Use water from local waterways and wetlands for hydrostatic testing; and
- Use four access roads.

In addition, fourteen Federally threatened and endangered species may occur in the proposed project area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, including alternative pipeline alignments, and measures to avoid or lessen

[1] ANR's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP04–114–000.
- Mail your comments so that they will be received in Washington, DC on or before July 26, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off our mailing list.

Notice of Site Visit

The USCG will conduct public meetings on July 12, 13, and 14, 2004, from 3 p.m. to 7 p.m. in Dauphin Island, Alabama; Mobile, Alabama; and Pascagoula, Mississippi; respectively. Each meeting will consist of an informational open house from 3 p.m. to 4:30 p.m. and a public scoping meeting from 5 p.m. to 7 p.m. There will be a Commission representative at the meeting in Mobile.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the Commission's proceeding, known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 1).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at FERC Online Support at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1500 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04–8–000]

Seafarer U.S. Pipeline System, Inc.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Seafarer U.S. Pipeline System Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

June 30, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Seafarer U.S. Pipeline System Project proposed by Seafarer U.S. Pipeline System, Inc. (hereafter referred to as Seafarer). This notice explains the scoping process we[1] will use to gather input from the public and interested agencies on the project. Your input will help us determine the issues that need to be evaluated in the EIS. Please note that the scoping period will close on August 16, 2004.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the public participation section of this notice. In lieu of sending written comments, we invite you to attend the public scoping meeting we have scheduled as follows:

Thursday, July 22, 2004, 7 p.m., Seafarer U.S. Pipeline System Project, Riviera Beach Council Chambers, 600 West Blue Heron Boulevard, Riviera Beach, FL 33404, Telephone: (561) 845–4010

Additionally, representatives of Seafarer and Commission staff will be visiting some project areas on the morning of Thursday, July 22, 2004. Anyone interested in participating in the site visit may meet in the parking lot of Phil Foster Memorial Park at 9 a.m.

[1] ''We,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

The park is located at 900 East Blue Heron Boulevard in Riviera Beach. Individuals must provide their own transportation.

The FERC will be the lead federal agency in the preparation of the EIS. The document will satisfy the requirements of the National Environmental Policy Act (NEPA).

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Seafarer proposes to construct and operate a natural gas pipeline to provide a new supply of competitively priced natural gas to south Florida. Overall, the proposed pipeline would extend approximately 127.5 miles from a proposed liquefied natural gas (LNG) facility on Grand Bahama Island to an interconnect site with the existing Florida Gas Transmission (FGT) pipeline system in Palm Beach County, Florida. The portion of the project under FERC jurisdiction would extend from the United States/Bahamian Exclusive Economic Zone (EEZ) boundary, located approximately 35 miles off the Florida coast, to the terminus at the FGT interconnect site. The proposed pipeline would make landfall on Singer Island near Riviera Beach, FL. The onshore portion would extend approximately 6 miles from landfall to the FGT interconnect site. The general location of the proposed pipeline is shown in Figure 1.[2] The portion of the Seafarer U.S. Pipeline System Project under FERC jurisdiction would include:

- 40.6 miles of 26-inch-diameter natural gas pipeline; and
- Aboveground facilities including four mainline valves (one offshore and three onshore), a pressure reduction station, a meter station, and a side valve at the FGT interconnect site.

Seafarer proposes to have the project constructed and operational by April 2008. The project would deliver up to 750 million cubic feet (about 800,000 dekatherms) of natural gas per day to Sailfish Natural Gas, Ltd., an affiliate of FPL Group Resources, via the FGT pipeline system.

[2] The figure referenced in this notice is not being printed in the **Federal Register**. Copies of the figure were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Seafarer.

The EIS Process

The FERC will use the EIS to consider the environmental impact that could result if it issues Seafarer project authorizations under sections 3 and 7 of the Natural Gas Act.

This notice formally announces our preparation of the EIS and the beginning of the process referred to as ''scoping.'' We are soliciting input from the public and interested agencies to help us focus the analysis in the EIS on the potentially significant environmental issues related to the proposed action.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its NEPA Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided under the Public Participation section of this Notice.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the project site and the facility information provided by Seafarer. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impacts to the nearshore marine environment from construction activities including the possibility of the unsuccessful implementation of HDD drilling beneath marine and nearshore habitats;
- Potential impacts to marine and estuarine water quality associated with construction activities;
- Potential impacts on wetlands and submerged aquatic vegetation;
- Potential impacts on coral and other marine life from pipeline construction activities;
- Potential impacts on essential fish habitat and state and/or federally-listed threatened and endangered species along the pipeline route;
- Consistency with coastal zone management guidelines;
- Potential impacts and potential benefits of construction workforce on local housing, infrastructure, public services, and economy;
- Potential impacts of increased boat traffic associated with construction in nearshore marine waters and the Intracoastal Waterway;
- Assessment of potential cultural resources along the pipeline route;
- Hazards associated with the transport of natural gas;
- Alternative alignments for the onshore and offshore pipeline route; and
- Assessment of the effect of the proposed project when combined with other past, present, or reasonably foreseeable future actions in the project area, including other recently proposed natural gas pipelines that would extend between the Bahamas and south Florida.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposal. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facilities sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC, on or before August 16, 2004, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 3, DG2E;
- Reference Docket No. PF04–8–000 on the original and both copies.

The public scoping meeting to be held on July 22, 2004, at the Riviera Beach

Council Chambers, is designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be generated so that your comments will be accurately recorded.

We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. To expedite our receipt and consideration of your comments, the Commission strongly encourages electronic submission of any comments on this project. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can submit comments you will need to create a free account, which can be created by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of submission you are making. This submission is considered a ''Comment on Filing.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the attached Information Request. If you do not return the Information Request, you will be removed from the project mailing list.

Once Seafarer formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet website (*www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number excluding the last three digits (*i.e.*, PF04–8) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, Seafarer has established an Internet Web site for this project at *http://www.seafarer.us/*. The Web site includes a description of the project, a map of the proposed pipeline route, and answers to frequently asked questions. You can also request additional information or provide comments directly to Seafarer at (866) 683–5587.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1497 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12491–000.

c. *Date Filed:* March 11, 2004.

d. *Applicant:* Davis Hydro, LLC.

e. *Name of Project:* Pit 4 Dam Retrofit Project.

f. *Location:* At the Pit 4 Diversion Dam on the Pit River, in Shasta County, California. The Dam is owned by Pacific Gas and Electric Company (PG&E). The project is partially on PG&E land but the project works and most of the reservoir is primarily on the Shasta-Trinity National Forest. The proposed project is for additional capacity at the existing License project No. 233 operated by Pacific Gas and Electric Company.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Richard Ely, Davis Hydro LLC, 27264 Meadowbrook Drive, Davis, CA 95616, (530) 753–0562.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12491–000) on any comments, protest, or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing Pit 4 Dam, which is a concrete structure consisting of a 37 foot non-overflow section at the right abutment, a 213 foot concrete gravity spillway section, and a 197 foot slab and buttress section at the left abutment. The concrete gravity spillway section is 78 feet in height from bedrock to spillway crest elevation on 2,048 feet and 108 feet to the current dam crest elevation of 2,438.5 feet elevation. The slab and buttress section is 202 feet long and has a height of 58 feet to a crest elevation of 2,445.33 feet, (2) a 7-foot-diameter approximately 200 foot long steel penstock, (3) an existing impoundment having a surface area of 105 acres and a storage capacity of 1,970 acre-feet having a normal water surface elevation of 2,442.5 feet mean sea level, (4) a proposed powerhouse containing one turbine with a installed capacity of 1,200 kilowatts, (5) a proposed 320-foot-long 12 kilovolt transmission line and (6) appurtenant facilities. Applicant estimates that the average annual generation would be 9 gigawatt-hours and project energy would be sold to a local utility. This project is for additional capacity at the already licensed Pit 3, 4, and 5 Hydroelectric Project, FERC No. 233. The proposed project will be constructed not to impact FERC Project No. 233 under current or expected future license requirements.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1492 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

June 30, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2232–472.

c. *Date Filed:* May 20, 2004.

d. *Applicant:* Duke Power, a Division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Energy Corporation, P.O. Box 1006, Charlotte, North Carolina, 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov*.

j. *Deadline for Filing Comments and or Motions:* July 30, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2232–472) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power (Duke) is seeking Commission approval to reduce the total number of boat slips at the existing approved Windemere Marina on Lake Norman from 94 to 81, and to increase the leased acreage from 1.48 acres to 1.95 acres. The configuration of the marina will be altered so that the slips that were originally planned for the back of the cove will now be built in open water to provide adequate clearance for boating. A permit would be issued by Duke to Turnpike Properties, Inc. for the construction and continued operation of the marina. The marina will be used by the residents of the Windemere Subdivision on Lake Norman, in Iredell County, North Carolina.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1493 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

June 30, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2232–473.

c. *Date Filed:* May 20, 2004.

d. *Applicant:* Duke Power, a Division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Energy Corporation, P.O. Box 1006, Charlotte, North Carolina, 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8764, or e-mail address: *shana.high@ferc.gov*.

j. *Deadline for Filing Comments and or Motions:* July 30, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–473) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power (Duke) is seeking Commission approval to reduce the total number of boat slips by 18 at an existing series of community docks with 558 slips on Lake Norman, and to reduce the leased acreage from 25.25 acres to 20.92 acres. A permit would be issued by Duke to the Point on Norman, LLC (the Point) for the construction and continued operation of the marina. The Point also request permission to remove 78 slips from a community marina and add 60 slips at 4 other locations. A new pump out facility will be installed on pier K of the marina complex. The marina will be used by the residents of the Point Subdivision on Lake Norman, in Iredell County, North Carolina.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to

intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1494 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

June 30, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2503–080.

c. *Date Filed:* March 26, 2004.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Keowee & Jocassee Project.

f. *Location:* The project is located in Oconee County, South Carolina. This project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, a division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. *FERC Contacts:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* July 14, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2503–080) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee proposes to grant a lease for 2.7 acres of project lands for a Commercial/Residential Marina to The Towne Homes on Keowee, LLC. The proposal consists of ten cluster docks with fifty-six boat slips and 370 feet of rip rap along the shoreline. The slips would provide reservoir access to the residents of The Towne Homes on Keowee, located in Oconee County, South Carolina.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnLineSupport@ferc.gov* or toll free (866) 208–3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1495 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Exemption From Licensing and Soliciting Comments, Motions To Intervene, and Protests

June 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Small Conduit Exemption.

b. *Project No.:* 7330–001.

c. *Date Filed:* June 7, 2004.

d. *Applicant:* Tehachapi-Cummings County Water District.

e. *Name of Project:* Power Recovery Number 1 Hydroelectric Project.

f. *Location:* Located at an existing pressure reducing station on the Tehachapi-Cummings County Water District's main pipeline, Tehachapi River, Kern County, California. No federal lands would be affected.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Glen Mueller, Tehachapi-Cummings County Water District, 22901 Banducci Road, Post Office Box 326, Tehachapi, CA 93561, (661) 822–5504.

i. *FERC Contact:* Jean Potvin, (202) 502–8928.

j. *Deadline for Filing Comments and or Motions:* July 30, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–7330–001) on any comments or motions filed.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

k. *Description of Request:* The Tehachapi-Cummings County Water District proposes to surrender its exemption from licensing for the conduit Power Recovery Number 1 Project because the generator and system are in need of extensive repair and the repair costs would not be realized over the next 20 years. The project consists of a bypass conduit at the existing pressure reducing station, a single turbine-generator unit with a rated capacity of 0.46 kW, and 100 feet of 12.0-kV transmission line. The applicant proposes to remove some pipe and add blind flanges.

l. *Locations of the Application:* This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, here P–7330, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnline Support@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the Tucson Water Department.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1496 Filed 7–7–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7783–3]

Truck Stop Electrification Codes and Electrical Standards; Notice of Data Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability; request for public comment.

SUMMARY: Long-haul truck drivers often idle their engines to provide heat, air conditioning, or electrical power while they rest in the sleeper compartment. They may also idle their engines to keep engine oil and fuel warm in cold weather to avoid engine-starting problems. This long-duration idling contributes to air pollution and fuel waste. The President, in his May 2001 National Energy Policy, directed the Environmental Protection Agency (EPA) and the Department of Transportation (DOT) to develop a program to reduce long-duration truck engine idling.

EPA recognizes that various technologies, strategies, and behaviors can effectively reduce long-duration idling while providing the truck driver with essential needs such as heat or air conditioning. One such technology is known as ''truck stop electrification'' (TSE). TSE allows the electrical grid to supply power to truck on-board components or stationary components for heating, cooling and other needs.

As an emerging technology, TSE requires installing stationary infrastructure to allow the electrical grid to provide power to the truck. In some TSE configurations, the truck is equipped with on-board components; in other cases, the truck needs no on-board modifications. As TSE has gained popularity, the need for greater government-industry cooperation has become apparent. Several truck and engine manufacturers have TSE truck designs, and two TSE technology manufacturers have deployed stationary technology at several locations. Standardizing TSE technology is a concern for the long-haul trucking industry. Further, truck manufacturers, truck stop operators, and States and Federal agencies need to know that if they assist in TSE deployment to reduce emissions and conserve fuel, the interface between the truck and stationary infrastructure will need to be compatible across the country.

Many different and divergent codes and standards potentially could be applied to TSE, including those set forth by the following organizations:

—National Electrical Code (NEC) providing standards for electric vehicle, recreational vehicle (RV) and marine power pedestals along with on-board wiring standards for RV's.

—Society of Automotive Engineers (SAE) providing standards for high voltage primary system wiring design and components.

—Underwriters Laboratories (UL) providing standards for 120 VAC distribution wiring, plugs, receptacles, protective devices and on-board appliances.

—National Electrical Manufacturer's Association (NEMA) providing standards for plug and receptacle outlet configurations.

—Canadian Standards Association (CSA) and Canadian Electrical Code (CEC) providing standards similar to that of UL and NEC but for application in Canada.

Some of these standards-setting organizations have established preferred voltage/current ratings, plug types, and truck cab external connection locations. For example, SAE standard J1673 defines design and use requirements for primary high voltage wiring systems aboard on-road vehicles, but lacks explicit guidelines for distribution of 120-Volt alternating current (AC) originating from grid-based electrical outlets for use on secondary power systems, as in the case of TSE. Additionally, the RV wiring standards listed in NEC and CSA allow for wiring practice that may not be suitable for the high vibration environment of a truck or the facility designs found at truck stops. For example, the use of insulation

displacement connections with solid wire is an excepted practice with RV's that when exposed to high vibration will cut into the wire with the potential of being hazardous. Truck manufacturers have already dealt with local code enforcement organizations that claim oversight of the manufacturing installation of standard AC systems within their jurisdictions. But to date there is no consensus on a uniform approach to addressing the on-board TSE equipment as well as the stationary equipment requirements.

On October 27, 2003, EPA and DOT held the first national workshop on developing consistent TSE codes and electrical standards. The goal of the workshop was to examine the issues surrounding TSE standards and to try to generate an initial consensus on a consistent, national standard for TSE as it applies to long-haul trucks. This was accomplished by examining a variety of existing codes and standards, holding a facilitated discussion of the concerns and issues as seen from the various perspectives of the long-haul trucking industry, and developing an initial national recommendation or action plan dealing with TSE standards.

The purpose of this Notice of Data Availability is to seek your input on the workshop recommendations. TSE standardization requires input from various industry and standards-setting organizations. The comments and suggestions received from this notice will be used to better develop a national consensus. Once consensus is reached on many of the above issues and choices, a standards-setting organization will need to formally undertake the effort of establishing a national standard.

DATES: Submit comments on or before August 9, 2004.

ADDRESSES: Comments may be submitted electronically or by mail to the contact below or through EPA Dockets at *http://www.epa.gov/edocket* by searching on the appropriate docket identification number. EPA will make available for public inspection at the Air and Radiation Docket written comments received from interested parties. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference number for this docket is OAR–2003–0226.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lonoff, Transportation and Regional Programs Division (6406J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Telephone: (202) 343–9147, e-mail address: *Lonoff.Elizabeth@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Current Codes and Standards

Based on the workshop, the following currently applicable standards were identified as relevant to TSE:

Managing organization	Document identifier	Title
Society of Automotive Engineers	SAE J1654	High Voltage Primary Cable.
Society of Automotive Engineers	SAE J1673	High Voltage Automotive Wiring Assembly Design.
Society of Automotive Engineers	SAE J1742	Connections for High Voltage On-board Road Vehicle Electrical Wiring Harnesses.
National Electrical Manufacturers Association	Standards Publication No. WD 6	Wiring Devices—Dimensional Specifications.
National Fire Protection Association	NFPA 70	2002 National Electric Code.
National Fire Protection Association	NFPA 1194	Standard for Recreational Vehicle Parks.
National Fire Protection Association	NFPA 70 Article 220	Branched Circuit and Feeder Calculations.
Underwriters Laboratories	Standard No. 62	Flexible Cord and Fixture Wire.
Underwriters Laboratories	Standard No. 817	Cord Sets and Power Supply Cords.
Underwriters Laboratories	Standard No. 943	Ground Fault Circuit Interrupters.
Canadian Standards Association	CEC, Part 1	2002 Canadian Electric Code.
Canadian Standards Association	C22.2 No. 21–95 (R1999)	Cord Sets and Power Supply Cords.
Canadian Standards Association	C22.2 No. 49–98	Flexible Cords and Cables.
Canadian Standards Association	Z240.6.2/C22.2 No. 149–99	Electrical Requirements for Recreational Vehicles.

II. Potential TSE Code and Electrical Standards

Based on discussions with and comments from key participants in the trucking and standard-setting industries, the following areas have been identified as needing attention. We seek your comments and suggestions on the following issues. As you write your comments, please indicate the section you are commenting on (*e.g.*, On-Board System Power Needs). Please ensure your comments are relevant to the issues presented

i. On-Board System Power Needs

To best determine uniform off-board power requirements, we need to better understand the on-board power needs. Truck drivers will operate various on-board components, such as an electric heating/air conditioning system, engine block heater, TV/VCR, refrigerator, and lights to name just a few. While not all of these on-board components operate simultaneously, and the power needs will fluctuate throughout the year, we need to determine a range of kilowatt (kW) power. What is the kW power needs? Is it <3 kW, 3–6kW, or >6 kW? Describe the types of devices and their kW needs when operated? Should we use peak power needs? Should we follow existing codes for feeder and demand calculations or does this technology warrant specific codes to follow? What are the future trends? Will power needs increase or decrease?

ii. Off-Board Power Needs

Based on certain assumptions of on-board power needs described above, what voltage and amperage configuration will supply the on-board needs? Should it be 120V, 240V single phase, 208V three phase, 208V single phase or some other voltage? Please be specific so as not to confuse 240V with 208V or other voltages that often get defined as equivalent. What amperage configuration will best provide the power required? Is it 20, 30, 50, or some other amperage? What are the power needs for transportation refrigerator units? Most engine block heaters are designed to operate at 120V. Will a voltage above 120V present problems for the existing heaters on the market? Or does this emphasize the need for truck

OEM's to install integrated block heaters into the TSE designs?

iii. Connection Compatibility and Safety

What plug configuration should be used? Should the block heater connection be considered as part of the truck-mounted TSE system? Should power management be required, and if so where should it be installed, on the truck or within the connection facility? Should multiple configurations be available on a percentage of use basis, as is done at RV campsites? How should the user be required to interface with the TSE system for questions and payment?

What type of safety considerations should be included in developing the TSE system? Which grounding standard should be adopted for truck on-board and facility systems? Should power be distributed in any certain manner? Should power be available at any distance away from vehicle? Should electrical safety measures (GFCI, fuses, breakers, etc.) be present on the truck, at the connection facility, in the connection wiring, or a combination of these? What sort of safeguards should be in place to verify that the driver only energizes his/her parking space? What safety measures (like auto-eject connectors or break-away connections, engine/transmission/emergency brake system interlocks, visual indicators, or other equipment) should be integrated into the TSE system to prevent structural damage, should users pull away while still connected? Should tamper loop monitoring be required? Are standards required to ensure safe power supply switching between on-board and off-board power sources? Should open service neutral protection be standardized on truck-mounted systems?

iv. System Design

What steps should be taken to ensure that modularity of both the truck-mounted and the facility-based TSE is ensured? How should wiring systems of the truck-mounted systems delineate AC and DC wiring or high and low voltage wiring (color-coding)? What location on the truck (incorporating safety, visibility, and user preferences) should be designated as the standard location for the installation of the truck-mounted TSE connection (*e.g.*, driver side, passenger side or front of vehicle, fender or cab area)? How should cab design issues be approached when determining the impact on cab power requirements? Should a standardized cab living space be identified to determine the vehicle electrical load requirements (heating, ventilation, and air conditioning [HVAC] system capacity and cab insulation levels)? What weight allowances should be permitted for truck-mounted TSE equipment?

Dated: June 29, 2004.

Suzanne Rudzinski,

Director, Transportation and Regional Programs Division.

[FR Doc. 04–15534 Filed 7–7–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7783–5]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/assistance/applicability.* The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background: The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. Although the part 63 NESHAP and section 111(d) of the Clean and Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 33 such documents added to the ADI on April 2004. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *http://www.epa.gov/compliance/assistance/applicability.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on (date); the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

Control	Category	Subpart	Title
A040001	Asbestos	M	Application of Solvent to Floor Mastic.
A040002	Asbestos	M	Application of Solvent to Floor Mastic.
C040001	CFC	F	Safe Disposal of Appliances.
M040001	MACT	T	Switching to non-HAP Solvent.
M040002	MACT	T	Modifications to Alt. Monitoring Method.
M040003	MACT	RRR	Alt. Monitoring Based on Scrap Inspection Program.
M040004	MACT	EEE	Alt. Monitoring for Automatic Waste Feed Cutoff.
M040005	MACT	O	Alt. Monitoring for Aeration Room Vent.
M040006	MACT	RRR	Test Waiver for Secondary Aluminum Ring Crusher.
M040007	MACT	GGG, U	Basing Parametric Monitoring Levels on Old Test Data.
M040008	MACT	MMM	Compliance & Parameters Based on Old Emission Test Data.
M040013	MACT	GGG	Off-site Interim Wastewater Storage Facilities.
M040012	MACT	GGG	Off-site Interim Wastewater Storage Facilities.
M040009	MACT	RRR	Alt. Test Duration—Secondary Aluminum Scrap Shredder.
M040010	MACT	NNNN	Non-household Floor Cleaning and Vacuuming Equipment.
M040011	MACT	HH	Leak Detection on Ancillary Equipment for Alt. Monitoring.
M040014	MACT	NNN	Binder Switch from Formaldehyde to Acrylic.
M040015	MACT	YYYY	Stationary Gas Turbines.
0400001	NSPS	GG	Alt. Nitrogen & Sulfur Monitoring\Use of CEMS.
0400002	NSPS	Dc	Alt. Fuel Usage Recordkeeping & Reporting.
0400003	NSPS	Db,Dc	Boiler Derate.
0400004	NSPS	Db	Alt. Opacity Monitoring.
0400005	NSPS	QQQ	Modification\Reconstruction of Aggregate Facilities.
0400006	NSPS	Db	Alt. Opacity Monitoring.
0400007	NSPS	Dc	Carbon Burn-Out Unit.
0400008	NSPS	Db	Monitoring Requirements.
0400011	NSPS	OOO	Non-metallic Mineral Production Line.
0400012	NSPS	GG	Custom Fuel Sulfur Monitoring Schedule.
0400013	NSPS	GG	Alt. Measurement of SO_2.
0400014	NSPS	GG	Custom Fuel Sulfur Monitoring Schedule.
0400015	NSPS	Ka, Kb	Modification of Storage Tanks.
0400016	NSPS	OOO, UUU	Applicability to Lime Plants.
0400017	NSPS	UUU	Sand Reclamation at Foundries.
0400018	NSPS	OOO	Adding Grinding Circuit to Stand-Alone Screening Operation.

Abstract for [M040001]

Q: Will the Associated Spring facility remain subject to 40 CFR part 63, subpart T, if it permanently stops using hazardous air pollutant (HAP) solvent and switches to a non-HAP solvent?

A: No. The Associated Spring facility no longer uses one of the listed solvents. Based on its commitment to continue in that mode for the forseeable future, EPA has determined that the facility is no longer subject to the halogenated solvent National Emission Standards for Hazardous Air Pollutants.

Abstract for [M040002]

Q: Will EPA approve revisions to an alternative monitoring method under 40 CFR 63.8(f) for complex continuous web cleaning machines subject to New Source Performance Standards (NSPS) subpart T at the Alcoa Mill Products' Davenport Works facility?

A: Yes. EPA will approve an alternative monitoring method to replace the specific monitoring requirements previously approved under NSPS subpart T.

Abstract for [M040003]

Q: Will EPA approve an alternative monitoring program for the Alcoa, Lafayette, Indiana secondary aluminum smelter subject to the Maximum Achievable Control Technology requirements in 40 CFR part 63, subpart RRR?

A: Yes. EPA will approve the alternative monitoring program because the scrap inspection program includes, among other requirements, that the facility make it clear to suppliers that it will not accept painted dealer extrusion scrap.

Abstract for [M040004]

Q: Will EPA approve alternative monitoring for the 32 rotary kiln incinerators at the Dow Chemical, Midland, Michigan facility? 40 CFR 63.1206(c)(3) requires that a hazardous waste incinerator have an automatic waste feed cutoff (AWFCO) that immediately and automatically cuts off hazardous waste feed under certain conditions. Dow requests that EPA allow continued feed of certain waste streams while the process information management system (PIMS), part of the AWFCO, is down. 40 CFR 63.1209(g)(1) allows EPA to approve alternative monitoring.

A: Yes. EPA approves the alternative monitoring request. When the PIMS is down, hourly rolling average concentrations will be interrupted. However, the continuous monitoring systems will read and electronically record instantaneous real time data of each monitored parameter, and Dow Chemical will base compliance on this data. Dow can continue to burn wastes as long as the instantaneous operating conditions do not exceed the operating parameters established under the Maximum Achievable Control Technology (MACT), and must stop feeding containers or lab packs and new liquids. In the event of an AWFCO

while the PIMS is down, the kiln will be fed only auxiliary fuel until the MACT parameters are within range and the PIMS has resumed operation. Triggering the AWFCO on instantaneous data at the MACT limits is more conservative than the hourly and the 12-hour rolling average limits the MACT allows. The PIMS does not control the operation of the kiln nor does it directly impact emissions. Continued operation with limited feeds will minimize any excess emissions from complete shutoff of the feed.

Abstract for [M040005]

Q: Will EPA approve the alternative monitoring request at the Cook, Incorporated sterilization facility in Ellettsville, Indiana for the dry bed reactors on the aeration room vent to comply with 40 CFR part 63, subpart O?

A: Yes. EPA approves the alternative monitoring request. Cook proposes to monitor the aeration room vents control equipment using a gas chromatograph (GC), and will conduct bag sampling at the dry bed system outlet on a weekly basis, measure the ethylene oxide concentration in the sample using the GC, and record the results. The facility will comply with the 1 ppmv standard at 40 CFR 63.362(d). Cook's request includes a description of the dry bed reactors, satisfactory performance specifications and quality assurance procedures for the GC, and complete performance test results, and the test results show compliance with the standard.

Abstract for [M040006]

Q: May the ring crusher at the Wabash Alloys secondary aluminum facility in Wabash, Indiana obtain a waiver of the performance testing required for scrap shredders to demonstrate compliance with the Maximum Achievable Control Technology particulate matter (PM) emission standard of 40 CFR 63.1505(b)(1)?

A: Yes. The facility has demonstrated that it is technically infeasible to use Method 5 to measure emissions. Method 9 visible emissions readings were taken for three runs, and each run was continuous for at least one hour. Visible emissions were 0 percent opacity at the transition from the crusher to the conveyor throughout all three runs. The opacity standard for scrap shredders with air pollution control devices, 40 CFR 63.1505(b)(2), is 10 percent. This facility's scrap shredder is uncontrolled. Since the visible emissions readings showed uncontrolled opacity far below the limit for a controlled source, this provides assurance that the ring crusher is in continuous compliance with the PM standard.

Abstract for [M040007]

Q: May the Dow Chemical Midland, Michigan facility use data from an April 15, 1988, performance test to establish alternative parametric monitoring levels for monitoring compliance with the pharmaceutical National Emission Standards for Hazardous Air Pollutants and the Group I polymer and resins NESHAP, 40 CFR part 63, subparts GGG and U?

A: No. Dow Chemical must conduct a performance test that represents current operation, and resubmit a request to establish alternative parametric levels.

Abstract for [M040008]

Q1: May the Dow Chemical facility in Midland, Michigan use data from an April 15, 1988 performance test to demonstrate compliance with the pesticide active ingredient National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR part 63, subpart MMM?

A1: No. Dow Chemical must conduct a performance test that represents current operation.

Q2: May the facility use data from a pharmaceutical Maximum Achievable Control Technology (MACT) performance test to demonstrate compliance with the pesticides NESHAP?

A2: No. Dow Chemical must conduct a performance test that represents current operation.

Q3: May the facility use the Title V renewable operating permit flexible group requirements as the pesticides MACT control device limits?

A3: No. Dow Chemical must conduct a performance test that represents current operation and resubmit a request to establish parametric levels. The proposed Method 25A may be insufficient to capture emissions from chlorinated, oxygenated and nitrogenated compounds. Dow must perform simultaneous Method 25 and Method 25A tests. Testing must be at maximum (worst case) operating conditions, including steady and non-steady state conditions.

Abstract for [M040009]

Q: May the Wabash Alloys secondary aluminum facility in Cleveland, Ohio demonstrate compliance under 40 CFR part 63, subpart RRR by conducting a test consisting of three runs, each with a duration of one hour, in place of the required three three-hour test runs?

A: Yes. The larger processing rate achieved during a one hour run will better represent maximum operations and emissions. This approval is granted provided that an adequate sample is obtained during a one hour run, and it applies only to continuous processes.

Abstract for [M040010]

Q: Is the Tennant facility in Minneapolis, Minnesota, which makes non-household floor cleaning and vacuuming equipment for the service industry, subject to the large appliance surface coating Maximum Achievable Control Technology (MACT), 40 CFR part 63, subpart NNNN?

A: Yes. During development of the standard, EPA visited a facility that makes products similar to those made by the Tennant facility. The background document for the proposed standard lists non-household vacuum cleaners and sweepers as examples of a large appliance, and lists the Tennant facility as a potential major source subject to MACT subpart NNNN. The final rule exempts household waxers and polishers that fall under Standard Industrial Classification (SIC) code 3639. However, the non-household products made by Tennant fall under SIC code 3589. There are no statements in the **Federal Register** or rulemaking record that would lead one to believe that there was an intent to exclude the equipment in Tennant's product line from MACT subpart NNNN.

Abstract for [M040011]

Q: Will EPA approve the alternative monitoring of quarterly visual inspections of equipment in ethylene glycol jacket water service (considered ''in VHAP service'') as a substitute for Method 21 under 40 CFR part 63, subpart HH at Chevron's Carter Creek Gas Plant in Evanston, Wyoming?

A: Yes. EPA has determined that quarterly visual inspections of equipment in jacket water service at a gas plant is an acceptable substitute for Method 21.

Abstract for [M040012]

Q: Do the requirements in 40 CFR 63.1256(a)(5) of the pharmaceutical Maximum Achievable Control Technology (MACT), subpart GGG, apply to off-site interim wastewater storage facilities that store but do not treat affected wastewaters, or that are not major sources as defined in section 112(a) of the Clean Air Act?

A: Yes. The language of the regulation and the background documents clarify that the intent is not simply to regulate offsite facilities that manage and treat affected wastewaters, and allow unregulated transfer of wastewaters and residuals from other types of facilities. It is also not the intent of the rule to

prohibit such transfer as long as the transferee certifies that it will manage and treat the wastewater in accordance with the rule. These are technical compliance requirements, not threshold applicability issues. As originally promulgated, MACT subpart GGG did not allow off-site treatment of wastewater containing 50 ppmw or more of partially soluble hazardous air pollutants. However, MACT subpart GGG has been amended to allow such transfers, as long as the transferee certifies that the wastewater or residual will be managed and treated in accordance with the rule. While the requirements of MACT subpart GGG apply to owners or operators of pharmaceutical manufacturing operations that are major sources, the requirements of 40 CFR 63.1256(a)(5) apply to any transferee. The transferee must certify in writing to the EPA that the transferee will comply with those requirements. Lacking that certification, the owner or operator of the subject pharmaceutical operation may not transfer the wastewater or residual. By providing the certification, the transferee voluntarily accepts the compliance responsibility in 40 CFR 63.1256(a)(5)(ii) and 63.1256(a)(5)(iv). If the facility decides to accept subject wastewater and residual from an affected source, the request for this applicability determination does not substitute for the required written certification.

Abstract for [M040013]

Q1: Facility A that is subject to the pharmaceutical Maximum Achievable Control Technology, subpart GGG, sends affected wastewater to Facility B that is an off-site, non-treatment certified facility. Facility B intends to send the wastewater to Facility C, another off-site non-treatment facility. Must Facility B ensure that Facility C is certified before sending the wastewater?

A1: Yes. By providing the original certification, Facility B has accepted responsibility for compliance with 40 CFR 63.1256(a)(5)(ii), which does not allow transfer of affected wastewater without a certification. However, if Facility C is under the control of the entity that submitted the certification for Facility B, no new certification is needed because a transferee is bound by the certification no matter which facility it uses.

Q2: Do the certification requirements of 40 CFR 63.1256(a)(5) apply to temporary sites where drums or tankers are stored but never opened or unloaded?

A2: Yes. After the transferee has certified that it will comply, 40 CFR 63.1256(a)(5)(ii) requires that it must do so no matter where it stores the affected wastewater.

Abstract for [M040014]

Q: Is a facility that switches from a formaldehyde binder to an acrylic binder still subject to 40 CFR part 63, subpart NNN?

A: No, the facility no longer meets the definition of a ''wool fiberglass manufacturing facility'' as defined in 40 CFR 63.1381, and therefore is no longer subject to the standard.

Abstract for [M040015]

Q: Is a turbine at the Wisdom Generating Station near Spencer, Iowa, that commenced construction prior to the proposed date of the Turbine Maximum Achievable Control Technology, subpart YYYY, considered an existing source?

A: Yes, the facility is an existing facility if construction was ''commenced'', as defined in 40 CFR 63.2, prior to the date the rule was proposed.

Abstract for [0400001]

Q1: May Reliant Energy's Portland Station facility use a certified continuous emission monitoring system (CEMS) to monitor and record nitrogen oxides (NO_X) emissions in lieu of continuous monitoring of a water-to-fuel ratio under New Source Performance Standards (NSPS) subpart GG if it has the following characteristics: It is a simple cycle combustion turbine, with dry low NO_X burners with water injection; it is permitted to burn only natural gas or No. 2 fuel oil with a maximum sulfur content not to exceed 0.05% by weight; and it is an Acid Rain affected unit required to monitor and report emissions in accordance with 40 CFR part 75?

A1: Yes. This request is consistent with the EPA guidance memorandum dated March 12, 1993, approving the use of CEMS for NO_X as an alternative to monitoring the water to fuel ratio. The facility is required to report excess NO_X emissions as required in 40 CFR 60.7.

Q2: May Reliant Energy's Portland Station facility waive the requirement to correct CEMS results to International Standards Organization (ISO) standard day conditions since the permitted NO_X limits are considerably more stringent than the applicable NSPS subpart GG limit?

A2: Yes. Because the proposal would ensure compliance with the applicable ISO-corrected NSPS subpart GG standard under reasonably expected ambient conditions, except conditions that might occur with very high ambient temperature, EPA approves this waiver of the requirement to correct CEMS results to ISO standard day conditions on a continuous basis when ambient temperature is no higher than 105 degrees F.

Q3: May the facility waive the nitrogen monitoring requirement of 40 CFR 60.334(b)(2) for natural gas?

A3: Yes. EPA developed a National Policy dated August 14, 1987, that waives the nitrogen monitoring requirement for pipeline quality natural gas.

Q4: May the facility waive the nitrogen monitoring requirement of 40 CFR 60.334(b)(1) for fuel oil?

A4: Yes. The facility may waive the nitrogen monitoring requirement because a certified NO_X CEMS is being used to satisfy NO_X emissions monitoring requirements.

Q5: May the facility waive the sulfur content monitoring requirements of 40 CFR 60.334(b)(2) for natural gas and in lieu thereof use 40 CFR part 75, Appendix D section 2.3.1.4 ''Documentation that a Fuel is Pipeline Natural Gas''?

A5: Yes. The facility may waive the sulfur content monitoring requirements because this request is consistent with the intent of National Policy. However, the facility will be required to report excess emissions under 40 CFR 60.7(c).

Q6: May the facility waive the sulfur content monitoring requirements of 40 CFR 60.334(b)(2) for fuel oil and in lieu thereof use 40 CFR part 75, Appendix D section 2.2 to monitor sulfur content of fuel oil?

A6: Yes. The facility may waive the sulfur content monitoring requirements because the unit in question is permitted to burn only natural gas and No. 2 fuel oil with a maximum sulfur content not to exceed 0.05% by weight.

Abstract for [0400002]

Q: Will EPA allow Conoco Phillips under New Source Performance Standards subpart Dc to maintain fuel usage records on a monthly basis and submit reports on an annual basis for a boiler at its Chatom Gas Treating & Processing facility which uses only natural gas as a fuel?

A: Yes. The alternative recordkeeping and reporting frequencies are acceptable.

Abstract for [0400003]

Q: Will EPA approve a proposal under New Source Performance Standards subpart Db to derate a boiler at North Carolina Baptist Hospital which consists of limiting the combustion air flow by

welding a mechanical stop to limit the travel of the inlet valve dampers?

A: No. The proposed derate does not meet the criteria specified in other proposals approved by EPA. In order to be an acceptable derate, a permanent physical change must be made. The proposed method is not considered permanent and could be reversed rather easily.

Abstract for [0400004]

Q: May the U.S. Sugar Corporation facility in Clewiston, Florida use EPA Method 9 instead of a continuous opacity monitoring system for a boiler with an annual capacity factor of ten percent when firing distillate oil under New Source Performance Standards subpart Db?

A: Yes. The proposed alternative monitoring is acceptable and is consistent with alternative opacity monitoring procedures approved for other similar operations with a low annual capacity factor for distillate oil.

Abstract for [0400005]

Q: Should the installation costs of two oily wastewater storage tanks at the Hunt Refining Company in Tuscaloosa, Alabama be considered when determining if a modification or reconstruction of aggregate facilities has occurred under New Source Performance Standards (NSPS) subpart QQQ?

A: No. Since the two storage tanks are not affected facilities under NSPS subpart QQQ, the costs of the tanks are not considered. The tanks, which are subject to the NSPS subpart Kb emission standards at 40 CFR 60.112b, are not oil water separators and are not part of an aggregate facility.

Abstract for [0400006]

Q: May the Lockheed Martin Aeronautics (LM Aero) facility in Marietta, Georgia, use an alternative monitoring procedure based on EPA Reference Method 9 data instead of using a continuous opacity monitoring system while firing distillate oil under New Source Performance Standards (NSPS) subpart Db ?

A: No. The proposed alternative monitoring procedure does not limit the annual capacity factor while firing distillate oil to ten percent or less and, thus, is not acceptable under NSPS subpart Db.

Abstract for [0400007]

Q: A proposed carbon burn-out unit at Progress Energy's Roxboro Plant will be used to burn fly ash and heat feedwater going to electric utility steam generating units. Will the carbon burn-out unit, subject to New Source Performance Standards (NSPS) subpart Dc, be a modification of the existing electric utility steam generating units or a new stand-alone affected facility?

A: The carbon burn-out unit will be a new steam generating unit affected facility subject to NSPS subpart Dc.

Abstract for [0400008]

Q: May an owner/operator of a 40 CFR part 60, subpart Db boiler demonstrate compliance with the New Source Performance Standards (NSPS) standard on a 30-day rolling average during the ozone season, perform a cylinder gas audit during the 45-day period prior to the onset of the ozone season annually, rather than 3 of 4 calendar quarters each year, and perform the relative accuracy test audit (RATA) test once every 5 years, rather than every year?

A: No. Compliance must be demonstrated not only during the ozone season, but for the entire year as long as the boiler is operating. Also, Appendix F of 40 CFR part 60 requires that a RATA be performed on an annual basis, at a minimum, and that cylinder gas audits be conducted in three of four calendar quarters. The NSPS does not provide for alternative schedules for implementing the auditing procedures needed to assure that quality continuous emission monitoring system data is collected.

Abstract for [0400011]

Q: Are the 20-inch discharge elevator 64010, E/W belt 64020, N/S belt 64030, E/W belt 64040, and pellet building supply elevator 64050 in the water softener pellet line at the Morton Salt facility in Rittman, Ohio subject to New Source Performance Standards (NSPS) subpart OOO?

A: Yes. EPA indicated in a clarification of 40 CFR part 60, subpart OOO, published at 62 FR 62953 (November 26, 1997), that all facilities listed in 40 CFR 60.670(a)(1) are subject to NSPS subpart OOO as long as crushing or grinding occurs anywhere at a non-metallic mineral processing plant. Moreover, based on the diagram submitted by Morton Salt, we conclude that the belt conveyors and bucket elevators in question are connected together to the crushers within the pellet system production line.

Abstract for [0400012]

Q: Will EPA approve the use under 40 CFR part 60, subpart GG of custom fuel sulfur monitoring schedules for natural gas-fired turbines which are used to drive natural gas liquids (NGL) pumps at Enterprise Products' Rock Springs and Granger facilities?

A: Yes. EPA approves the use of custom fuel sulfur monitoring schedules for natural gas-fired turbines which are used to drive the NGL pumps.

Abstract for [0400013]

Q: Will EPA waive for Exxon Mobil's Shute Creek Plant the inlet measurements of fuel required by 40 CFR 60.334(b) and allow the outlet sulfur dioxide (SO_2) continuous emissions monitoring system (CEM) measurements to be submitted as documentation of compliance with New Source Performance Standards (NSPS) subpart GG?

A: Yes. EPA Region VIII approves the use of the SO_2 CEM in lieu of monitoring sulfur and nitrogen content of the fuel required under NSPS subpart GG, because Exxon Mobil proposes monitoring emissions directly and continuously and is required to do so under their permit, and because the permit emission limits are below the emission limitation according to 40 CFR 60.332.

Abstract for [0400014]

Q: Will EPA approve the use under 40 CFR part 60, subpart GG of custom fuel sulfur monitoring schedules for natural gas-fired turbines at eight Williams Field Services facilities?

A: Yes. EPA approves the use of custom fuel sulfur monitoring schedules for natural gas-fired turbines at the eight facilities.

Abstract for [0400015]

Q: Does the addition of a floating roof coupled with a switch in the material stored constitute a modification of a storage tank under 40 CFR 60.14(e)(4)?

A: Yes, if there is an increase in emissions to the atmosphere and the change in storage materials is coupled with a change in vessel design to make the vessel capable of accommodating the switch in storage materials.

Abstract for [0400016]

Q: Is the processing of lime product at the Greer Lime Company in Riverton, West Virginia, subject to 40 CFR part 60, subpart OOO?

A: No, equipment used to process lime product is not subject to New Source Performance Standards (NSPS) subpart OOO.

Q: Is a limestone dryer at the Greer Lime Company in Riverton, West Virginia, subject to 40 CFR part 60, subpart UUU?

A: No, limestone is not a listed mineral in the definition of a ''mineral processing plant,'' as defined in 40 CFR 60.730, and therefore is not subject to NSPS subpart UUU.

Abstract for [0400017]

Q: Are sand reclamation processes located at foundries subject to 40 CFR part 60, subpart UUU?

A: Yes, calciners or dryers used for sand reclamation at a foundry are subject to NSPS subpart UUU.

Abstract for [0400018]

Q: Would a stand-alone screening operation at the Lyons Evaporation Plant in Lyons, Kansas, become subject to 40 CFR part 60, subpart OOO if a new grinding circuit is added to the plant?

A: Yes, the stand-alone screening operation would become subject to this NSPS with the addition of a grinding circuit because the facility would meet the definition of a ''mineral processing plant'' as defined in 40 CFR 60.671.

Abstract for [C040001]

Q: There are instances in which small appliances, motor vehicle air conditioning (MVAC), and MVAC-like appliances arrive at a disposal facility and the disposal facility is uncertain whether EPA would consider these appliances subject to the disposal regulations of 40 CFR 82.156(f). Would the following circumstances result in appliances being subject to the safe disposal regulations: (1) Receipt of an appliance in which some components of the refrigerant circuit have been removed; (2) receipt of portions of the refrigerant circuit (e.g., compressor); (3) receipt of an appliance in which the entire refrigerant circuit has been removed; or (4) receipt of an appliance which has previously been through a process in which refrigerant would have been released or recovered?

A: Activities (1) and (2), as described above, would be subject to the safe disposal regulations. Activities (3) and (4), as described above, would not be subject to the safe disposal regulations.

Abstract for [A040001]

Q: Is the use of solvent and a mechanical buffer to remove asbestos-containing floor mastic subject to the Asbestos National Emission Standards for Hazardous Air Pollutants, subpart M?

A: Yes, because the application of solvent followed by the buffer is considered abrading the floor mastic. This situation is distinguishable from the facts in previous determinations cited in the request for a determination.

Abstract for [A040002]

Q: Notwithstanding a prior determination, is the use of solvent and a mechanical buffer to remove asbestos-containing floor mastic subject to the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), subpart M, under the specific circumstances defined in the request for determination?

A: Yes, because the application of solvent followed by the buffer is considered abrading the floor mastic. As defined in 40 CFR 61.141, regulated asbestos-containing material can be a Category I non-friable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading. Floor mastic, a Category I material, is potentially subject if it is sanded, ground, cut or abraded. While the use of solvent softens the floor mastic, the buffer and pad abrade the floor mastic, making this subject to the Asbestos NESHAP.

Dated: June 28, 2004.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 04–15533 Filed 7–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7783–4]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit filed by Sierra Club, Georgia Forestwatch, and Newton Florist Club in the U.S. District Court for the Northern District of Georgia: *Sierra Club, Georgia, Forestwatch, and Newton Florist Club* v. *Leavitt,* No. 04–CV–576 (MHS) (ND GA). Plaintiffs filed the complaint in this Action on March 2, 2004, against Defendants Michael O. Leavitt, Administrator of the United States Environmental Protection Agency, and United States Environmental Protection Agency (collectively ''EPA'') claiming EPA failed to respond in a timely manner to Plaintiffs petition challenging Georgia's Title V operating permit for the Cargill Vegetable Oil Mill. Under the terms of the proposed settlement agreement, no later than July 16, 2004, EPA shall sign an order granting or denying Plaintiffs' petition.

DATES: Written comments on the proposed settlement agreement must be received by August 9, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2004–0005, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Amber Aranda, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–1737.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

Plaintiffs claim that EPA has not completed an alleged nondiscretionary duty to grant or deny a petition pursuant to section 505(b)(2) of the Clean Air Act (''CAA''), 42 U.S.C. 7661d(b)(2) and seeks an order from the Court establishing a deadline by which EPA must grant or deny Plaintiffs' petition. The Plaintiffs petition requests that EPA object to the permit amendment issued by the Georgia Environmental Protection Division (''EPD'' or the ''Department'') to Cargill, Inc. (''Cargill'' or ''Permittee'') for its facility located in Gainesville (Hall County), Georgia.

No later than July 16, 2004, EPA shall sign an order granting or denying Plaintiffs' petition. Within 5 business days following signature of such order, EPA shall provide notice of such order to Plaintiffs. No later than 10 calendar days following signature of such order, EPA shall deliver a notice of the order to the Office of the Federal Register for publication. Following such delivery to the Office of the Federal Register, EPA shall not take any step (other than as necessary to correct within 10 business days after submittal any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the **Federal Register**. EPA shall additionally not take any step (other than as necessary to correct within 10 business days after submittal

any typographical or other errors in form) to delay or otherwise interfere with publication of notice in the **Federal Register** of orders relating to Plaintiffs' petition.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get A Copy Of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2004–0005 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 8, 2004.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 04–15535 Filed 7–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7783–8]

Notice of Intent To Re-Evaluate the Aquatic Life Ambient Water Quality Criteria for Ammonia

AGENCY: Environmental Protection Agency.

ACTION: Request for data and information.

SUMMARY: Section 304(a) of the Clean Water Act (CWA) authorizes the U.S. Environmental Protection Agency (EPA) to develop and publish, and from time to time revise, criteria recommendations for water accurately reflecting the latest scientific knowledge. Today, EPA is notifying the public of its intent to re-evaluate the current aquatic life criteria for ammonia to determine if a revision is warranted based on new toxicity data for aquatic organisms. EPA is also soliciting any additional pertinent toxicity data or information that may be useful in re-evaluating these criteria.

DATES: Submit data and information on or before August 9, 2004.

ADDRESSES: Data and information may be submitted electronically, by mail, or through hand deliver/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Amie Howell, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (202) 566–1143. *howell.amie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an public docket for this action under Docket ID No. OW–2004–0012. The official public docket consists of the documents specifically referenced in this action, any data received, and other information related to this action. Although a part of the public docket, the

public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view data and information, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

It is important to note that EPA's policy is that data and information, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the data contain copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies copyrighted material, EPA will provide a reference to that material in the version of the document that is placed in EPA's electronic public docket. The entire printed document, including the copyrighted material, will be available in the public docket.

Data and information submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Data and information that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Data and Information?

You may submit data and information electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your materials. Please ensure that your materials are submitted within the specified comment period.

1. *Electronically.* If you submit data and information as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the data and information and allows EPA to contact you in case EPA cannot read your materials due to technical difficulties or needs further information on the substance of your materials. EPA's policy is that EPA will not edit your materials, and any identifying or contact information provided in the body of a document will be included as part of the materials that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your materials due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your materials.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit data and information to EPA electronically is EPA's preferred method for receiving data. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions. Once in the system, select ''search,'' and then key in Docket ID No. OW–2004–0012. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it along with your data.

ii. *E-mail.* Data and information may be sent by electronic mail (e-mail) to *ow-docket@epa.gov,* Attention Docket ID No. OW–2004–0012. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the data and information that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit data and information on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of any data or information to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0012.

3. *By Hand Delivery or Courier.* Deliver your data and information to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0012. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

Table of Contents

I. What Are Water Quality Criteria?

Section 304(a) of the CWA authorizes the EPA to develop, publish, and from time to time revise criteria recommendations for water that accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific

judgements. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water. Section 304(a) criteria recommendations provide a scientific basis to States and tribes for adopting water quality standards. The criteria also provide a scientific basis for EPA to develop water quality standards where appropriate under section 303(c) of the CWA.

II. Why Is EPA Re-Evaluating its Aquatic Life Ambient Water Quality Criteria for Ammonia?

EPA published ''Ambient Water Quality Criteria for Ammonia—1984.'' Since that time, results of additional toxicity tests on ammonia have been published that could affect the freshwater criterion for ammonia. The Agency published a 1998 Update to revise the 1984/1985 ammonia criteria document by addressing important issues to the extent possible. EPA obtained public comment on the 1998 Update. In response to those comments, EPA modified its criteria recommendations and prepared a 1999 Update. The 1999 Update differed from the 1998 Update primarily in the handling of the temperature-dependency for the chronic criterion (CCC) and, therefore, the formulation of the CCC and the expression of the national criterion.

Today, EPA is notifying the public of its intent to re-evaluate the aquatic life criteria for ammonia to determine if revisions are warranted based on new toxicity data on aquatic organisms. In particular, recent studies on freshwater mussels suggest that some freshwater mussel species may be more sensitive to ammonia exposure than the aquatic organisms considered in deriving the current ammonia criteria.

III. What Type of Information Does EPA Want From the Public?

EPA recently completed a comprehensive review of the available toxicity data for ammonia. The list of pertinent references identified by the Agency for this chemical is available from EPA's electronic public docket under Docket ID No. OW–2004–0012. EPA is soliciting additional pertinent toxicity data or information it might use to re-evaluate the ammonia criteria. In particular, EPA is interested in obtaining from the public any new data, not identified by the Agency's literature review, on the acute or chronic toxicity of ammonia to aquatic life and scientific views on the interpretation of submitted data, particularly new data on the toxicity of ammonia to freshwater mussels. You should adequately document any data you submit. It should also contain enough supporting information to show that acceptable test procedures were used and that the results are reliable. Please refer to the ''Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'' (EPA–822–R–85–100, January 1985) for guidance on data suitability. This document may be ordered online from *http://yosemite.epa.gov/water/owrccatalog.nsf* or is available from EPA's electronic public docket at *http://www.epa.gov/edocket/* under Docket ID No. OW–2004–0012.

IV. Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Criteria?

The Agency published detailed information about its revised process for developing and revising criteria in the **Federal Register** on December 10, 1998 (63 FR 68354), and in the EPA document entitled ''National Recommended Water Quality-Correction'' (EPA 822–Z–99–001, April 1999). The revised process provides greater opportunities for public input and makes the criteria development process more efficient.

Dated: July 1, 2004.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 04–15532 Filed 7–7–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–1716]

Clarification of the Use of Telecommunications Relay Services (TRS) and the Health Insurance Portability and Accountability Act (HIPAA)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission clarifies that the use of Telecommunications Relay Services (TRS) programs to facilitate telephone calls between health care professionals and patients, when one of the parties to the call has a hearing or speech disability, does not violate the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA). This document also clarifies that, consistent with HIPAA, a covered entity, such as a doctor or other health care professional, *can* contact a patient using TRS without requiring the TRS facility or individual communications assistants (CAs) to sign a disclosure agreement (what HIPAA generally refers to a ''business associate contract'').

DATES: Effective June 16, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Traci Randolph, (202) 418–0569 (voice), (202) 418–0537 (TTY), or e-mail *traci.randolph@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* DA 04–1716 released June 16, 2004.

The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160.

To request this document in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This *Public Notice* can also be downloaded in Word and Portable Formats at *http://www.fcc.gov/cgb/dro.*

Synopsis

As background, TRS, as mandated by Title IV of the Americans with Disabilities Act of 1990, makes the telephone system accessible to individuals with hearing or speech disabilities. *See* 47 U.S.C. 225. This is accomplished through TRS facilities that are staffed by specially trained CAs using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. Department of Health and Human Services (HHS) enacted HIPAA in 1996, which included provisions mandating the adoption of federal privacy protections for individual's health information. *See* Public Law Number 104–191 (1996). In response to the HIPAA mandate, HHS published the Privacy Rule, stating that as of April 14, 2003 (April 14, 2004, for small health plans), covered entities must implement

standards to protect and guard against the misuse of individually identifiable health information. *See* 45 CFR Parts 160 and 164. Some health professionals have been concerned that contacting patients and discussing health related information via TRS poses a possible violation of the Privacy Rule because a ''third party,'' the TRS CA, hears the information being discussed as the call is relayed. Some state TRS facilities have informed the FCC that health professionals are requiring all of the facility's CAs to sign disclosure forms before they will use TRS to contact patients with hearing or speech disabilities.

We therefore emphasize that all forms of TRS, including ''traditional'' TTY based relay, Internet Protocol (IP) Relay, Video Relay Service (VRS), and Speech-to-Speech (STS), can be used to facilitate calls between health care professionals and patients without violating HIPPA's Privacy Rule. For further information on this issue *see* HHS's FAQ sheet which is available at *http://www.hhs.gov/ocr/hipaa* or on the FCC's Disability Rights Office's Web site at *http://www.fcc.gov/cgb/dro/trs.html.*

Federal Communications Commission.

P. June Taylor,

Chief of Staff, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–15539 Filed 7–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Exchange Delisting: Bank of Guam

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is publishing for notice and comment that the Bank of Guam, an FDIC Insured state non-member bank, has filed an application with the FDIC to withdraw its common stock from listing and registration on the Pacific Exchange.

DATES: Written comments must be received no later than August 9, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- *http://www.fdic.gov/regulations/law/federal/propose.html.*
- *E-mail:* comments@fdic.gov. Include ''Exchange Delisting: Bank of Guam'' in the subject line of the message.
- *Mail:* Dennis Chapman, Senior Staff Accountant, the Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: You may inspect comments at the FDIC Public Information Center, Room 100, 801 17th Street, NW, between 9 a.m. and 4:30 p.m. on business days. Information about this notice, including copies of the collected comments, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Bank of Guam, an FDIC Insured state non-member bank, has filed an application with the FDIC, pursuant to Section 12(i) and (d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder (as authorized by 12 CFR 335.101 and 12 CFR 335.231),[2] to withdraw its common stock, $ .208 par value (''Security''), from listing and registration on the Pacific Exchange also called the Archipelago Exchange (''Exchange'') operated by PCX Equities, Inc.

On March 22, 2004, the Board of Directors (''Board'') of the Issuer approved a resolution to withdraw the Issuer's Security from listing on the Exchange. The Board states that the reasons for such action include: (i) The number of stockholders of record in the Issuer's Security; (ii) the limited extent of trading in the Issuer's Security; and (iii) the material costs of the listing.

The Issuer stated in its application that it has met the requirements of Exchange Rules concerning an issuer's voluntary withdrawal of a security from listing and registration. The Exchange approved the delisting April 22, 2004 and notified the bank of the approval by letter dated April 23, 2004.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Exchange and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

The FDIC is accepting comments on the Exchange Delisting of the Bank of Guam, and specifically on the facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the FDIC for the protection of investors. The FDIC, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the FDIC determines to order a hearing on the matter.

Dated at Washington, DC, this 1st day of July, 2004.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 04–15469 Filed 7–7–04; 8:45 am]

BILLING CODE 6714–01–P

[1] 15 U.S.C. 78l (i) and (d).

[2] 12 CFR 335.101, 12 CFR 335.231 and 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l (b).

[4] 15 U.S.C. 78l (g).

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

DATE & TIME: *Tuesday, July 13, 2004 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g, Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Thursday, July 15, 2004 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Advisory Opinion 2004–18: Friends of Joe Lieberman by counsel, Cassandra Lentchner.

Advisory Opinion 2004–20: Diane Farrell for Congress by Adam Wood.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–15664 Filed 7–6–04; 3:01 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 2004.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Vincent Joseph Fumo, Philadelphia, Pennsylvania; to acquire voting shares of PSB Bancorp, Inc., Philadelphia, Pennsylvania, and thereby indirectly acquire voting shares of First Penn Bank, Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, July 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–15452 Filed 7–7–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. MidSouth Bancorp, Inc., Lafayette, Louisiana; to merge with Lamar Bancshares, Inc., Beaumont, Texas, and thereby indirectly acquire Lamar Delaware Financial Corporation, Dover, Delaware, and Lamar Bank, Beaumont, Texas.

Board of Governors of the Federal Reserve System, July 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–15451 Filed 7–7–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Technical Evaluation Panel (TEP): Surveillance for Incident Cases of Asthma, Contract Solicitation Numbers 2004–N–01206 and 2004–N–01208

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Technical Evaluation Panel (TEP): Surveillance for Incident Cases of Asthma, Contract Solicitation Numbers 2004–N–01206 and 2004–N–01208.

Times and Dates: 1 p.m.–1:30 p.m., July 26, 2004 (Open).

1:30 p.m.–4:30 p.m., July 26, 2004 (Closed).

Place: Teleconference Phone Number 1–888–889–1733 Pass Code 6552508.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of proposals received in response to Surveillance for Incident Cases of Asthma, Contract Solicitation Numbers 2004–N–01206 and 2004–N–01208.

Contact Person For More Information: J. Felix Rogers, Ph.D., M.P.H., Centers for Disease Control, National Center for Environmental Health/Agency for Toxic Substance Disease Registry, Office of Science, 1824 Century Boulevard, Atlanta, GA 30345, Telephone (404) 498–0222.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15502 Filed 7–7–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Longitudinal Epidemiologic Study To Gain Insight Into HIV and AIDS in Children and Youth (LEGACY), Contract Solicitation Number 2004–N–01211

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Longitudinal Epidemiologic Study to Gain Insight into HIV and AIDS in Children and Youth (LEGACY), Contract Solicitation Number 2004–N–01211.

Times and Dates: 8:30 a.m.–9:15 a.m., July 27, 2004 (Open), 9:15 a.m.–2:15 p.m., July 27, 2004 (Closed).

Place: The Westin Buckhead Atlanta, 3391 Peachtree Road, NE., Atlanta, GA 30326, Telephone Number (404) 365–0065.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Special Emphasis Panel (SEP): Longitudinal Epidemiologic Study to Gain Insight into HIV and AIDS in Children and Youth (LEGACY), Contract Solicitation Number 2004–N–01211.

Contact Person for More Information: Noreen L. Qualls, DrPH, Scientific Review Administrator, Centers for Disease Control, National Center for HIV, STD, Office of the Associate Director for Science, 1600 Clifton Road NE., Mailstop E07, Atlanta, GA 30333, Telephone (404) 639–8006.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–15503 Filed 7–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Seroconverter Specimen Panels for Validation of Incidence Assays, Contract Solicitation 2004–N–01329

In accordance with section 10(a)(2) of the Federal Advisory; Committee Act (Pub. L. 92–463), the Centers for Disease; Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Seroconverter Specimen Panels for Validation of Incidence Assays, Contract Solicitation 2004–N–01329.

Times and Dates: 1 p.m.–1:45 p.m., July 23, 2004 (Open).

1:45 p.m.–3 p.m., July 23, 2004 (Closed).

Place: Teleconference number 1–888–396–9924, pass code 21864.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Contract Solicitation 2004–N–01329.

Contact Person for More Information: Noreen L. Qualls, DrPH, Scientific Review Administrator, CDC, National Center for HIV, STD, and TB Prevention, Office of the Associate Director of Science, 1600 Clifton Road, NE., MS–E07, Atlanta, GA 30333, Telephone (404) 639–8006.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–15504 Filed 7–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Publication of Closed Meeting Summary of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

Committee Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Background: The Advisory Board on Radiation and Worker Health met on May 17, 2004, in closed session to discuss the Proposed Independent Government Cost Estimate (IGCE) for the Board's Task Order contract and a submitted proposal of work. This contract, once awarded, will provide technical support to assist the Board in fulfilling its statutory duty to advise the Secretary of Health and Human Services regarding the dose reconstruction efforts under the Energy Employees Occupational Illness Compensation Program Act. A Determination to Close the meeting was approved and published, as required by the Federal Advisory Committee Act.

Summary of the Meeting: Attendance was as follows:

Board Members:

Paul L. Ziemer, Ph.D., Chair
Larry J. Elliott, Executive Secretary
Henry A. Anderson, M.D., Member
Roy L. DeHart, M.D., M.P.H., Member
Richard L. Espinosa, Member
Michael H. Gibson, Member
Mark A. Griffon, Member
James M. Melius, M.D., Dr.P.H., Member
Wanda I. Munn, Member
Charles L. Owens, Member
Robert W. Presley, Member
Genevieve S. Roessler, Ph.D., Member

NIOSH Staff: Martha DiMuzio, Cori Homer, Liz Homoki-Titus, and Jim Neton. Ray S. Green, Court Recorder.

Summary/Minutes: Dr. Ziemer called to order the Advisory Board on Radiation and Worker Health (ABRWH) in closed session on May 17, 2004 at 9:05 a.m. The purpose of the closed meeting was to discuss the Proposed IGCE for the Board's Task Order contract and a submitted proposal of work.

General topics discussed:

- Closed session procedures.
- IGCE for task proposals of the task order contract.

Dr. Paul Ziemer adjourned the closed session of the ABRWH meeting at 11:30 a.m. with no further business being conducted by the ABRWH.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–6825, fax (513) 533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15505 Filed 7–7–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Career Survey of Science-Oriented Scholars

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of Loan Repayment and Scholarship (OLRS), National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below.

This proposed information collection was previously published in the **Federal Register** on February 3, 2004, pages 7235–7236, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

(1) *Title:* Career Survey of Science-Oriented Scholars (CSSOS).

(2) Focus group of current and former participants in the Undergraduate Scholarship Program (UGSP) at NIH.

Type of Information Collection Request: NEW.

Need and Use of Information Collection: This survey and focus group are part of a comprehensive evaluation of the National Institutes of Health (NIH) Undergraduate Scholarship Program (UGSP), the purpose of which is to evaluate the success of the UGSP in achieving its intermediate goal of keeping scholars from disadvantaged backgrounds on track to eventually become tenured research scientists at the NIH. The CSSOS will collection information on undergraduate, graduate, and post-graduate education and training; employment history, experiences with the NIH; career status and goals, and demographic data. The protocol for the focus groups will address the program application process; experiences during the school year, particularly relations with college mentors; experience during the summer internship; experiences during years spent in payback; perceptions of program effects; career plans; and potential program improvements. Such information can be used to gauge whether the program is meeting the expectations of program managers and how the program could be improved in the future. It will be used to address the outcome and impact study questions related to short- and long-term retention, both at NIH and in research generally.

In addition to informing OLRS about the effectiveness of the UGSP program, the results of the evaluation will become the basis for recommendations on how the program could be modified to improve outcomes. Indeed, some of the findings may be useful to the Office of the Director, NIH, in terms of human resources policy in particular and NIH policy generally. Also, the information collection will help our Nation's leaders in setting policies to ensure a solid infrastructure for biomedical research. Encouraging the Nation's brightest minds to pursue careers in biomedical research, both in public service such as NIH and in private laboratories, is critical to this effort.

Frequency of Response: One-time data collection.

Affected Public: Individuals.

Type of Respondents: Current and former NIH UGSP finalist applicants and scholars. The annualized cost to respondents is estimated at $6,687. There are no capital costs, operating costs, and/or maintenance costs to report.

Type of respondent	Approximate number of completed responses	Response per respondent	Hours per response	Total burden hours	Wage rate	Total hour cost
College Students	30	1	.50	15.0	$20.00/hr	$300
College Graduates	120	1	.75	90.0	$44.82/hr	$4,034
Focus Group Participants	35	1	1.5	52.5	$44.82/hr	$2,353
Total	185			157.5		$6,687

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited, particularly with respect to one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology, and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, shall be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Alfred C. Johnson, Director, Undergraduate Scholarship Program, NIH, 2 Center Drive, Room 2E30, Bethesda, Maryland 20892–0230, or call toll-free number (800) 528–7689 or e-mail your request including your address to: *ACJohnson@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 30, 2004.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 04–15468 Filed 7–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 DD (22) TYPE 2 – U01 Applications Review.

Date: July 14, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health NIAAA/NIH —Fishers Building, 5635 Fishers Lane, 3045, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasvia B. Kandasamy, PhD, Scientific Review Administrator, Exramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Applications.

Date: July 23, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientific and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 29, 2004.

LaVerne Y.Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15461 Filed 7–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, National Cooperative Drug Discovery Groups for Tuberculosis.

Date: August 3, 2004.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, 3143, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn Rust, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

June 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15462 Filed 7–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Murine Atals of Genitourinary Development—Database.

Date: July 19, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7799, *Is38oz@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetic Nephropathy—Feasibility Projects.

Date: July 23, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452 (301) 594–7799, *Is38oz@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Trail Design for Immunosuppresants.

Date: July 23, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Bench to Bedside Diabetes.

Date: July 27–28, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Endoscopic Clinical Research in Pancreatic and Biliary Diseases.

Date: July 27, 2004.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Immune Modulation of Intestinal Goblet Cell Response.

Date: July 28, 2004.

Time: 4 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Clinical Trials in Total Parenteral Nutrition.

Date: August 9, 2004.

Time: 6 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15463 Filed 7–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Educational Marketing''.

Date: July 14, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientific Development Awards, and Research Scientific Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15464 Filed 7–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Stroke Protection.

Date: June 30, 2004.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Udall Centers.

Date: July 13, 2004.

Time: 10 AM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Willard InterContinental Hotel, 1401 Pennsylvania Ave., NW. Washington, DC 20004.

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Chronic Pain CNS Studies.

Date: July 26, 2004.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Blvd., Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Researach Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: June 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15466 Filed 7–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, Conference Grants.

Date: July 13, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: June 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15467 Filed 7–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 9, 2004, 10:30 a.m. to July 9, 2004, 2 p.m., Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037 which was published in the **Federal Register** on June 23, 2004, 69 FR 35050–35053.

The meeting will be held at The River Inn, 924 25th Street, NW., Washington, DC 20037. The meeting date and time remain the same. The meeting is closed to the public.

Dated: June 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–15465 Filed 7–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Proposed Project: Protocols for the Cross-Site Evaluation of the State Incentive Grant (SIG) Program (OMB No. 0930–0226, Revision)—SAMHSA's Center for Substance Abuse Prevention (CSAP) is charged with evaluating the State Incentive Cooperative Agreements for Community-Based Action, or State Incentive Grant (SIG) Program. States receiving SIG funds are to: (1) Coordinate, leverage and/or redirect, as appropriate, all substance abuse prevention resources within the State that are directed at communities, families, schools, and workplaces, and (2) develop a revitalized, comprehensive State-wide prevention strategy aimed at reducing drug use by youth. The ultimate aim of the SIG Program is to prevent substance abuse among youths, ages 12 to 17, and also young adults, age 18–25. The 41 States, along with the District of Columbia, Puerto Rico, and the Virgin Islands, that have received SIG grants are required to implement at the community level a range of substance abuse, community-based prevention programs and strategies, at least half of which meet the specifications of sound scientific research findings, such as the National Registry of Effective Programs. CSAP awarded about $3 million per year for three years to each of five States in FY 1997 (Cohort I), fourteen States in FY 1998 (Cohort II), one State and the District of Columbia in FY 1999 (Cohort III), seven states in FY 2000 (Cohort IV), eight states and Puerto Rico in FY 2001 (Cohort V), four states in FY 2002 (Cohort VI) and two states and the Virgin Islands in FY 2003 (Cohort VII).

CSAP is conducting a national, cross-site evaluation of the SIG Program, consisting of a process and an outcome evaluation. The outcome evaluation will address two questions: (1) ''Has the SIG Program had an impact on youth substance abuse?'' and (2) ''How do SIG States differ in their impact on youth

substance abuse?'' These questions will be addressed primarily using the CSAP core measures, a data collection activity already approved by the Office or Management and Budget (OMB) under control number 0930–0230. In addition to the core measures, data already being collected by SAMHSA's National Survey on Drug Use and Health (NSDUH; OMB No. 0930–0110) will be examined.

The process evaluation will focus on three questions: (1) ''Did States attain the SIG Program's two main goals of coordinated funding streams and revitalized comprehensive prevention strategies and how were these goals attained?'' (2) ''What other substance abuse prevention programming has the State implemented?'' and (3) ''Did SIGs meet the criterion of supporting science-based programs fifty percent of the time, and what array of prevention activities were supported?''

Four instruments are needed to collect process information about SIG activities at the State, community, and program levels: (1) Semi-Annual Report; (2) a Final Report; (3) Site Visits; and (4) Telephone Interviews.

The Semi-Annual Report has three components. The first component, the SIG Semi-Annual Report Narrative Protocol will provide a structured report of SIG activities accomplished during the previous six months. The second component, the SIG Management Information Form (SMIF) will be a web-based, structured form. Following the first submission, selected items (less likely to change over time) will be pre-filled for subsequent reporting periods. The third component, the Sub-recipient Checklist (SCRL) will be a web-based form that contains two sections. The first section relates to the sub-recipient, the organization that actually has a fiduciary relationship with the state to engage in SIG activities at the local level. This section will gather information on the characteristics of that organization. The second section will focus on the actual prevention intervention(s) delivered by that organization.

At the conclusion of the grant, SIG awardees will be required to submit a Final Report which is designed to be a synthesis of findings from the grantee, addressing what changes occurred at the state and community levels as a result of SIG.

The community site visits will be conducted in randomly selected sample of sub-recipient communities in Cohorts I–III that have submitted pre-post matched outcome data that includes comparison data. The SIG Community Site Visit Protocol will collect data at the sub-recipient and program levels on the following topics: degree of monitoring by the State, selection processes of interventions, evaluation strategies, technical assistance provided by the State, level of guidance by the State in program selection, and evaluation.

The sampling frame for the telephone interviews will include all active sub-recipients in Cohorts I–V that are collecting outcome data at the intervention level. Sub-recipient communities selected for site visits will be excluded from the sampling frame. The SIG Community Telephone Interview Protocol will collect data on the processes for selection and implementation of interventions and the approach to evaluation of these interventions.

OMB approval has been received for the process evaluation in the first four cohorts (N = 28 states) and for states to submit previously collected outcome data for secondary analysis. This request will add the more recently funded SIG jurisdictions (Cohorts V–VII) to the process evaluation (N = 16 states) and address the burden on states (Cohorts VI–VII) to submit previously collected outcome data (N = 23 states). Included in this request are revised burden estimates based on actual experience, and a request for an extension of the period of OMB approval for the SIG cross-site evaluation by three years.

Estimated annual burden is as follows:

Instrument	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Semi-annual Report:				
Narrative	23	2	30	1,380
SMIF	23	2	1.5	69
SRCL	23	50	4	4,600
Final Report	23	1	80	1,840
Site Visits:				
State contacts	10	1	1	10
Subrecipient contacts	10	1	1	10
Site visit interviews (10 per site)	80	1	1.5	120
Telephone Interviews	81	1	1.5	122
Total	273			8,151

Written comments and recommendations concerning the proposed information collection should be sent by August 9, 2004, to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: June 30, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–15506 Filed 7–7–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25137–25138) on May 5, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 9, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 04–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

OMB Number: 1651–0003.

Form Number: Form CBP–7512 and 7512–A.

Abstract: This collection involves the movement of imported merchandise from the port of importation to another CBP port prior to release of the merchandise.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 14 hours.

Estimated Total Annual Burden Hours: 700,000 hours.

Estimated Total Annualized Cost on the Public: $12,950.000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–15495 Filed 7–7–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application for Exportation of Articles Under Special Bond

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Exportation of Articles Under Special Bond. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25135) on May 5, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 9, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application for Exportation of Articles under Special Bond.

OMB Number: 1651–0004.

Form Number: Form CBP–3495.

Abstract: This collection of information is used by importers for articles entered into the United States temporarily. These articles are free of duty under bond, and are exported within one year from the date of importation.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 1500.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 2,000.

Estimated Total Annualized Cost on the Public: $32,040.00.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–15496 Filed 7–7–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Declaration by the Person Who Performed the Processing of Goods

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration by the Person Who Performed the Processing of Goods Abroad. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25136–25137) on May 5, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 9, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Declaration by the Person Who Performed the Processing of Goods Abroad.

OMB Number: 1651–0039.

Form Number: N/A.

Abstract: This declaration, which is prepared by the foreign processor and submitted by the filer with each entry, provides details on the processing performed abroad and is necessary to assist CBP in determining whether the declared value of the processing is accurate.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,880.

Estimated Total Annualized Cost on the Public: $41,284.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–15497 Filed 7–7–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Importation Bond Structure

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Importation Bond Structure. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in

the **Federal Register** (69 FR 25138) on May 5, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 9, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Importation Bond Structure.

OMB Number: 1651–0050.

Form Number: CBP–301 and CBP–5297.

Abstract: Bonds are used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid. They are also used to provide legal recourse for the Government for noncompliance with CBP laws and regulations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 590,250.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 147,563.

Estimated Total Annualized Cost on the Public: $4,283,777.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–15498 Filed 7–7–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: U.S./Israel Free Trade Agreement

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: U.S./Israel Free Trade Agreement. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25137) on May 5, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 9, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: U.S./Israel Free Trade Agreement.

OMB Number: 1651–0065.

Form Number: N/A.

Abstract: This collection is used to ensure conformance with the provisions of the U.S./Israel Free Trade Agreement for duty free entry status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 34,500.

Estimated Time Per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 7,505.

Estimated Total Annualized Cost on the Public: $143,345.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–15499 Filed 7–7–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Importation of Ethyl Alcohol for Non-Beverage Purposes

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Importation of Ethyl Alcohol for Non-Beverage Purposes. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25136) on May 5, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 9, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Importation of Ethyl Alcohol for Non-Beverage Purpose.

OMB Number: 1651–0056.

Form Number: N/A.

Abstract: This collection is a declaration claiming duty-free entry. It is filed by the broker or their agent, and then is transferred with other documentation to the Alcohol and Tobacco Tax and Trade Bureau of the Treasury Department.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 25.

Estimated Total Annualized Cost on the Public: $544.50.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 30, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–15500 Filed 7–7–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4903–N–46]

Notice of Submission of Proposed Information Collection to OMB; Requirements for Designating Housing Projects Plan

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request to continue to collect the information required for Public Housing Agencies (PHAs) to designate a project(s) for elderly families, disabled families, or elderly and disabled families.

DATES: *Comments Due Date:* August 9, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0192) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding

programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requirements for Designating Housing Projects Plan.

OMB Approval Number: 2577–0192.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This is a request to continue to collect the information required for Public Housing Agencies (PHAs) to designate a project(s) for elderly families, disabled families, or elderly and disabled families.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	205	1		14		2,872

Total Estimated Burden Hours: 2,872.

Status: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–15447 Filed 7–7–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–47]

Notice of Submission of Proposed Information Collection to OMB; Request for Approval of Proposed Public Housing Development (Public Housing Development, Mixed-Finance Development)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to revise the currently approved information collection for proposed development or mixed-finance development. The information allows HUD to determine whether funds should be reserved or a contractual commitment made. Some of the currently required information has been formatted in three additional forms.

DATES: Comments Due Date: August 9, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0033) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Approval of Proposed Public Housing Development (Public Housing Development, Mixed-Finance Development).

OMB Approval Number: 2577–0033.

Form Numbers: HUD–51971 1, HUD–51971–11, HUD–52482, HUD–52483–A, HUD–52485, and HUD–52651–A Newform 1, Newform 2, Newform 3, Newform 4.

Description of the Need for the Information and Its Proposed Use: This is a request for approval to revise the currently approved information collection for proposed development or mixed-finance development. The information allows HUD to determine whether funds should be reserved or a contractual commitment made. Some of the currently required information has been formatted in three additional forms.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	146	1		77.83		11,364

Total Estimated Burden Hours: 11,364.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 30, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–15448 Filed 7–7–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–09]

Notice of Availability of the Record of Decision and Lead Agency Findings Statement for the World Trade Center Memorial and Redevelopment Plan in the Borough of Manhattan, City of New York, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) announces the availability of the Record of Decision and Lead Agency Findings Statement (ROD) for the World Trade Center Memorial and Redevelopment Plan. This notice is given on behalf of the Lower Manhattan Development Corporation (LMDC). LMDC is a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York). As the recipient of HUD Community Development Block Grant funds appropriated for the World Trade Center disaster recovery and rebuilding efforts, LMDC acts, pursuant to 42 U.S.C. 5304(g), as the responsible entity for compliance with the National Environmental Policy Act in accordance with 24 CFR 58.4. LMDC also acts under its authority as lead agency in accordance with the New York State Environmental Quality Review Act. The ROD has been prepared in cooperation with The Port Authority of New York and New Jersey. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. The Final Generic Environmental Impact Statement (FGEIS) for the World Trade Center Memorial and Redevelopment Plan was available for public comment from April 16, 2004 through May 24, 2004. All substantive comments received were considered during the preparation of the ROD.

FOR FURTHER INFORMATION CONTACT: Further information and a copy of the ROD may be obtained by contacting: William H. Kelley, Planning Project Manager, Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY 10006; telephone: (212) 962–2300; fax: (212) 962–2431; e-mail: *wtcenvironmental@renewnyc.com.* A copy of the ROD is also available on LMDC's Web site: *http://www.RenewNYC.com* in the ''Planning, Design & Development'' section.

SUPPLEMENTARY INFORMATION: After considering a variety of alternatives, including a no-action alternative, LMDC has selected the ''Proposed Action'' as defined in the FGEIS along with the possible use of the ''Northern Service Option,'' a refinement of the ''At-Grade Loading Alternative'' discussed in the FGEIS (the Selected Project). The Selected Project will provide for the construction on the Project Site of a WTC Memorial (Memorial), an interpretive museum (Memorial Center) and cultural facilities, up to approximately 10 million square feet of above-grade Class A office space with associated storage, mechanical, loading, below-grade parking, and other non-office space, up to 1 million square feet of retail space, a hotel with up to 800 rooms and up to 150,000 square feet of conference space, open space areas, and certain infrastructure improvements. The combined total of the retail and hotel facilities will not exceed 1.6 million square feet. The Selected Project will be assisted in part by HUD Community Development Block Grant funds appropriated by Congress for the World Trade Center disaster recovery and rebuilding efforts.

The Project Site includes the WTC Site and the Southern Site. The WTC Site is a parcel bounded by Liberty, Church, and Vesey Streets and Route 9A. The Southern Site comprises two adjacent blocks south of the WTC Site—one bounded by Liberty, Washington, Albany, and Greenwich Streets, and the other bounded by Liberty, Cedar, and Washington Streets and Route 9A—and portions of two streets: Liberty Street between those blocks and the WTC Site and Washington Street between Cedar and Liberty Streets. Together the sites comprise approximately 20.6 acres in Lower Manhattan.

LMDC has adopted all practical means to avoid or minimize environmental harm from the Selected Project and adopted monitoring and enforcement programs where applicable for mitigation. Monitoring procedures and enforcement mechanisms for the Selected Project will include the implementation of the Commercial Design Guidelines and Sustainable Design Guidelines, participation in the Lower Manhattan Construction Coordination Group, cooperation with the Lower Manhattan Construction Command Center, implementation of the World Trade Center Memorial and Redevelopment Plan Programmatic Agreement, implementation of traffic mitigation measures and compliance with the discharge limits and requirements of the State Pollutant Discharge Elimination System permit for the Hudson River pump station and its cooling water intake system.

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: June 29, 2004.

Nelson Bregón,

General Deputy Assistant Secretary, Community Planning and Development.

[FR Doc. 04–15449 Filed 7–7–04; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Glen Canyon Dam Adaptive Management Work Group; Notice of Renewal

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to advise and provide recommendations to the Secretary with respect to her responsibility to comply with the Grand Canyon Protection Act of October 30, 1992, embodied in Public Law 102–575.

Further information regarding the advisory council may be obtained from the Bureau of Reclamation, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

The certification of renewal is published below.

Certification

I hereby certify that renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the

purpose of duties imposed on the Department of the Interior by 30 U.S.C. 1–8.

Dated: June 24, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–15564 Filed 7–7–04; 8:45 am]

BILLING CODE 4310–MN–M?≤

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 19, 2004. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 23, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Los Angeles County

Whitley Court, 1720–1728 ½ Whitley Ave., Los Angeles, 04000732

Sacramento County

Brown, John Stanford, House, 13950 CA 160, Walnut Grove, 04000733

Santa Cruz County

Redman House, 1635 W. Beach Dr., Watsonville, 04000734

COLORADO

Denver County

Downtown Denver Central YMCA and Annex, 25 E. Sixteenth Ave., Denver, 04000736

Routt County

Summit Creek Ranger Station, Cty Rd. 129, Columbine, 04000735

FLORIDA

Miami-Dade County

Nike Missile Site HM–69, Long Pine Key Rd., Homestead, 04000758

KANSAS

Reno County

Downtown Core North Historic District, (Commercial and Industrial Resources of Hutchinson MPS) Generally bounded by BNSF RR tracks, 1st Ave., W side of N. Main and Polpar St., Hutchinson, 04000739

Downtown Core South Historic District, (Commercial and Industrial Resources of Hutchinson MPS) Generally bounded by C Ave., the alley S of Sherman, Washington and Poplar Sts., Hutchinson, 04000737

Houston Whiteside Historic District, Roughly bounded by BNSF RR tracks, Pershing, Ave. B and Ave. A, Plum and Elm Sts. Hutchinson, 04000738

LOUISIANA

Concordia Parish

Frogmore (16CO9), Address Restricted, Frogmore, 04000740

MAINE

Cumberland County

Pownal Cattle Pound, Hallowell Rd., Bradbury Mountain State Park, 0.7 mi. N of jct with Dyer Rd., Pownal, 04000745

Kennebec County

Colburn House State Historic Site, Arnold Rd., Old ME 27 (0.1 mi. S of jct. with ME 27), Pittston, 04000741

Knox County

Maxcy, Joseph and Hannah, Homestead, 630 S. Union Rd., Union, 04000743

Lincoln County

Jefferson Cattle Pound, 0.75 mi. W of jct. of Gardiner Rd. and ME 213, Jefferson, 04000742

York County

Cummings' Guest House, 110 Portland Ave., Old Orchard Beach, 04000744

MISSOURI

St. Louis Independent City

Guth, Edwin F., Company Complex, 2615 Washington Ave., St. Louis (Independent City), 04000748

Haas Building, 410 N. Jefferson Ave. (and 2327 Locust St.), St. Louis (Independent City), 04000747

Pet Plaza, 400 S. 4th St., St. Louis (Independent City), 04000749

Wrought Iron Range Company Building, 1901–37 Washington Ave., St. Louis (Independent City), 04000746

NEBRASKA

Lancaster County

Herter Farmstead (Boundary Increase), 4949 S. 148th St., Walton, 04000750

NEW YORK

Albany County

Houghtaling, Teunis, House, 1045 Clarksville South Rd., Clarksville, 04000751

Columbia County

Snyderville Schoolhouse, Cty Rd. 8, N side, W of Green Acres Rd., Snyderville, 04000754

New York County

St. Walburga's Academy, 630 Riverside Dr., New York, 04000755

Orange County

McDowell, Thomas, House, 517 Lake Rd., New Windsor, 04000753

St. Lawrence County

Edwards Town Hall, 161 Main St., Edwards, 04000752

Warren County

Glens Falls Cemetery, (Glens Falls MRA) 38 Ogden St., Glens Falls, 04000756

NORTH DAKOTA

Grand Forks County

Grand Forks Near Southside Historic District, Roughly bounded by ND 697, Red River, 13th Ave. and Cottonwood St., Grand Forks, 04000757

PENNSYLVANIA

Union County

Lewisburg Historic District, Roughly bounded by U.S. 15, Beck St., Susquehanna River and Borough boundary, Lewisburg, 04000759

SOUTH CAROLINA

Spartanburg County

Pacolet Mill Office, 180 Montgomery Ave., Pacolet, 04000760

SOUTH DAKOTA

Beadle County

McMonies Barn, 604 33rd St. SE, Huron, 04000762

Grant County

Big Stone City Hall, 469 Main, Big Stone City, 04000764

Gregory County

Gregory Buttes Stone Steps, 11th–14th Sts., 200–300 blks, Gregory, 04000763

Jackson County

Mt. Moriah Masonic Lodge #155, 101 Main St. S, Kadoka, 04000765

Turner County

Parker Masonic Hall, 130 S. Cherry Ave., Parker, 04000761

TENNESSEE

Shelby County

Galloway—Speedway Historic District, (Memphis MPS) N. Parkway, Faxon, Greenlaw, Galloway, and Forrest Aves., Memphis, 04000766

TEXAS

Lubbock County

Carlock Building, 1001–1013 13th St., Lubbock, 04000767

Midland County

Bush, George W., Childhood Home, 1412 W. Ohio, Midland, 04000768

VERMONT

Franklin County

Goodrich, Solomon, Homestead, 4787 Ethan Allen Highway, Georgia, 04000770

Rutland County

Kazon Building, 50 Marble St., West Rutland, 04000769

Windham County

Sabin—Wheat Farm, 346 Westminster Rd., Putney, 04000771

A request for MOVE has been made for the following resource:

TEXAS

Denton County

Rector Road Bridge at Clear Creek (Historic Bridges of Texas MPS) Approx. 2.5 mi. SE of Sanger, Sanger vicinity, 03001418

[FR Doc. 04–15443 Filed 7–7–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 26, 2004. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 23, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Napa County

First Street Bridge, (Highway Bridges of California MPS) First St. across the Napa R, Napa, 04000774

COLORADO

Denver County

Sheedy Mansion, 1115–1121 Grant St., Denver, 04000780

Huerfano County

Milliken Creek Bridge, (Highway Bridges of California MPS) Trancas St. across Milliken Creek, Napa, 04000775

FLORIDA

Monroe County

Overseas Highway and Railway Bridges (Boundary Increase), Parallel to U.S. 1 (Approx. MM 9.8–72.8), Key Largo, 04000788

KANSAS

Sedgwick County

Bitting Historic District, Generally the 1100 and 1200 Blks of Bitting, Wichita, 04000776

East Douglas Avenue Historic District, Roughly bounded by Topeka, Rock Island, 1st, and English Sts., Wichita, 04000777

Park Place—Fairview Historic District, Roughly Park Place and Fairview Aves. bet. 13th and 17th Sts. and Wellington Place, Wichita, 04000778

Topeka—Emporia Historic District, Roughly N. Topeka and Emporia Aves. bet. 10th and 13th Sts., Wichita, 04000779

KENTUCKY

Anderson County

Lexington Extension of the Louisville Southern Railroad, Eastern Lawrenceburg to Milner, Lawrenceburg, 04000789

Boone County

Burlington Historic District (Boundary Decrease), (Boone County, Kentucky MPS) Portions of Washington, Gallative, Perlate, Temperate, Garrard, Jefferson, Ohio Sts., Nicholas Ave., and Union Sq., Burlington, 04000797

Clark County

Oliver School, 30 Oliver St., Winchester, 04000795

Victory Heights Elementary School, 160 Maryland Ave., Winchester, 04000796

Hart County

Gardner House, farm lane on N side of W. Walker Rd., Northtown, 04000794

Larue County

New Haven Battlefield Site, Lyons Station Rd., New Haven, 04000793

Lincoln County

Richland Farm, 5355 KY 1194, Stanford, 04000792

Metcalfe County

Metcalfe County Jail, Corner of East, Edmonton, 04000791

Taylor County

Tate, Isaac, Farm, Five mi. S of Campbellsville on KY 55, Campbellsville, 04000802

Warren County

Oakland—Freeport Historic District, Vine, Young, Lee, Mills, Rasdall, Church, Main, Oakland, Kelly, Burnett, Oakland-Smiths Grove, Cooke, Grimes and Mansfield St. Oakland, 04000801

Pioneer Log Cabin, Kentucky St., near jct. with University Dr., Bowling Green, 04000790

LOUISIANA

West Carroll Parish

Marsden (16R13), Address Restricted, Delhi, 04000803

MISSOURI

Cass County

Pleasant Hill Downtown Historic District, Approx. bounded by the 200 blk of Cedar St., 100 blk of Lake St., 100–115 Wyoming St. and 101–204 First St., Pleasant Hill, 04000781

Jackson County

Mutual Ice Company Building, 4142–4144 Pennsylvania Ave., Kansas City, 04000783

St. Louis County

Old Webster Historic District, Roughly bounded by Allen Ave., Elm Ave., W. Lockwood Ave. and the Missouri Pacific RR Tracks, Webster Groves, 04000782

St. Louis Independent City Building at 1121–23 Locust St., 1121–23 Locust St., St. Louis (Independent City), 04000785

Harris Teachers College, (St. Louis Public Schools of William B. Ittner MPS (AD)) 1517 South Theresa, St. Louis (Independent City), 04000787

Spool Cotton Co. Building, 1113–15 Locust St., St. Louis (Independent City), 04000786

NEBRASKA

Burt County

Bryant, Edward W. and Rose Folsom, House, Address Restricted, Tekamah, 04000804

Dawes County

Wohlers, Henry, Sr., Homestead, Address Restricted, Crawford, 04000800

Scotts Bluff County

Gering Courier Building, 1428 10th St., Gering, 04000799

Western Public Service Building, 1721 Broadway, Scottsbluff, 04000798

PENNSYLVANIA

Jefferson County

Herpel Brothers Foundry and Machine Shop, 45 W. Main St., Reynoldsville, 04000806

Montgomery County

Sanatoga Union Sunday School, 2341 East High St., Lower Pottsgrove township, 04000805

Westmoreland County

McFarlane, Andrew and Jennie, House, 50 Maus Dr., North Huntingdon, 04000807

RHODE ISLAND

Providence County

Providence Dyeing, Bleaching, Calendring Company, 46, 50, 52, 60 Valley St., 80 Delaine St., Providence, 04000809

Rhode Island Tool Company, 146–148 W. River St., Providence, 04000808

UTAH

San Juan County

Natural Bridges Archeological District, Address Restricted, Blanding, 04000784

WISCONSIN

Juneau County

Shelton, William and Mary, Farmstead, N2397 Cty Hwy K, Seven Mile Creek, 04000810

[FR Doc. 04–15444 Filed 7–7–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 10N; ATF O 1120.3]

Delegation Order—Authority To Maintain the National Firearms Registration and Transfer Record

1. *Purpose.* This order delegates authority to maintain custody and control of the National Firearms Registration and Transfer Record and authority to execute certifications relative thereto.

2. *Cancellation.* ATF O 1130.3, Delegation Order—Authority to Maintain the National Firearms Registration and Transfer Record, dated 4/7/1997.

3. *Effective Date.* This delegation order becomes effective immediately upon publication.

4. *Authority.* The authority vested in the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, to maintain a central registry of all firearms in the United States, which are not in the possession of or under the control of the United States, is contained in 27 CFR 479.101.

5. *Delegation.* Under the authority vested in the Director, ATF, by Department of Justice Final Rule [AG Order No. 2650–2003] as published in the **Federal Register** on January 31, 2003, and by Title 28 CFR 0.130 through 0.131, the custody and control of the National Firearms Registration and Transfer Record and the authority to execute certifications relative thereto is hereby delegated to the Chief, Firearms and Explosives Services Division, to the Chief, National Firearms Act Branch, and to specialists, and legal instruments (applications) examiners within the National Firearms Act Branch.

6. *Redelegation.* The authority delegated above may not be redelegated.

7. *Questions.* Questions regarding this delegation order may be addressed to the Chief, National Firearms Act Branch at 202–927–8330.

Carl J. Truscott,

Director.

[FR Doc. 04–15269 Filed 7–7–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Globus Consortium, Inc.

Notice is hereby given that, on June 10, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Globus Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Globus Consortium, Inc., Glen Ellyn, IL; Sun Microsystems, Inc., Santa Clara, CA; and Nortel Networks Limited, Brampton, Ontario, CANADA. The nature and objectives of the venture are to advance the promotion of, provide support for, and encourage participation in, research, development, education, technical support and standardization for a collection of software development tools used to create infrastructure for grid computing commonly known as the ''Globus Toolkit,'' which provides enabling technology for grid computing.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–15459 Filed 7–7–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Nano-Imprint Lithography Infrastructure for Low Cost Replication at the 65NM Node and Beyond

Notice is hereby given that, on June 9, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Nano-Imprint Lithography Infrastructure for Low Cost Replication at the 65nm Node and Beyond has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Molecular Imprints, Inc., Austin, TX; KLA-Tencor Corporation, San Jose, CA; Motorola, Inc., Tempe, AZ; Photronics, Inc., Brookfield, CT; and The University of Texas at Austin, Austin, TX. The nature and objectives of the venture are to design and demonstrate technology for step and flash imprint lithography (S–FIL), a novel method of transferring integrated circuit patterns to the surface of a semiconductor wafer by molding of three dimensional features potentially as small as 20 nanometers or less.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–15460 Filed 7–7–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on June 8, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Continental Florida Materials, Fort Lauderdale, FL is now part of Lehigh Cement Company, Allentown, PA and is no longer listed as a member. Also, North Central Cement Promotion Association, Elko, MN, an Associate Member, is now known as North Central Cement Council; and ROAN Industries, Inc., Holly Hill, SC, an Associate Member, is no longer a party to the venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on February 10, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2004 (69 FR 11651).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–15458 Filed 7–7–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Traffic Stop Data Collection Policies for State Police, 2004.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 60, on page 16287 on March 29, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 9, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Traffic Stop Data Collection Policies for State Police, 2004.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: SP–1, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Government. Other: none. 42 U.S.C. 3711, *et seq.* authorizes the Department of Justice to collect and analyze statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 49 respondents will complete each form within approximately 45 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 38 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 1, 2004.

Brenda E. Dyer,

Clearance Officer, Department of Justice.

[FR Doc. 04–15480 Filed 7–7–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[SGA 04–12]

Telework/Telecommuting Pilot Research

Solicitation for Cooperative Agreements

Announcement Type: Notice of availability of funds; solicitation for Cooperative Agreement Applications for Telework/Telecommuting Pilot Research.

Funding Opportunity Number: SGA 04–12.

Catalogue of Federal Domestic Assistance (CFDA) Number: 17.720

Key Date: Applications must be received by August 9, 2004.

Executive Summary: The U.S. Department of Labor (''DOL'' or ''Department''), Office of Disability Employment Policy (ODEP), announces the availability of $2.5 million to fund up to three pilot research projects to investigate, develop, and validate strategies likely * * * to yield the largest number of telework positions for people with disabilities in cooperation with Federal and State agencies.'' See H. Conf. Rep. No. 108–401, 108th Cong., 1st Sess. (2003). Each cooperative agreement award will range from $600,000 to $830,000 and will be for a 36-month period of performance.

SUPPLEMENTARY INFORMATION

This notice contains all of the necessary information and forms needed to apply for the ODEP Cooperative Agreement.

I. Funding Opportunity Description and Authority

In recent years, both the Executive branch and Congress have increasingly promoted telework to help achieve increased employment opportunities for people with disabilities. In response to these initiatives, the overall purpose of this research is to investigate, develop, and validate strategies likely to yield the largest number of telework positions for

people with disabilities in cooperation with Federal and State agencies and to expand understanding of the full dimensions of telework as an employment option for people with disabilities through rigorous investigation and implementation of research-based comprehensive telework models.

Authorities: H. Conf. Rep. No. 108–401, 108th Cong., 1st Sess. (2003); Consolidated Appropriations Resolution, 2004.

ODEP anticipates awarding up to three cooperative agreements in the range of $600,000 to $830,000 for a 36-month period of performance. The competition for new awards focuses on research priorities identified as follows:

1. Using telework as a return-to-work strategy specifically for people with disabilities receiving Federal and State Workers' Compensation.
2. Using telework as an alternative strategy for increasing competitive employment for disabled veterans returning from tours of duty.
3. To survey public (Federal and State agencies) and private employers to identify supporting conditions and strategies that are necessary to effectively implement and sustain telework for people with disabilities.

This ODEP Cooperative Agreement anticipates substantial involvement between ODEP and the awardee during the performance of this project. Involvement will include collaboration or participation by ODEP in the overall direction of the project throughout the period of the award. ODEP will provide expertise and guidance in decisions involving the research focus, approaches/methodologies, strategies, allocation of resources, staffing, development of public information materials, analysis, and dissemination of research findings, including a final report.

Applicants will be required to address a minimum of two of priorities identified above in their applications. In addition, applicants will be required to: (1) Collaborate with Federal and State agencies to identify positions that will yield the greatest number of telework opportunities for people with disabilities and ensure the recruitment of research participants so that each sample population is appropriate and of sufficient size; (2) identify the impact of telework on productivity, performance, and costs-benefits; (3) disseminate research findings to stakeholders using accessible formats; (4) evaluate the impact of the research findings on increasing employment opportunities for people with disabilities using telework strategies validated through the research. Finally, applicants will be required to cooperate with ODEP's External Evaluation Contractor in order to conduct an independent evaluation of project activities and outcomes.

Applicants are requested to address the identified priorities by formulating research questions that are significant and relevant to the priorities previously identified. Proposals are expected to include clearly defined research designs including, but not limited to, surveys, quasi-experimental studies, observational research methodologies and others. After selection, depending upon the type of questions specified and research design proposed, ODEP reserves the right to modify or substitute questions or the research design, as appropriate. Investigators also will be required to develop outcome measures, instruments, and data analysis procedures so that study findings are reportable. Proposals will be evaluated on the basis of: (1) The significance of the proposed project; (2) the quality of the design of the research activities; (3) the quality of project personnel; (4) budget and resource capacity; (5) the quality of the management plan; and (6) the quality of data for project evaluation.

The mission of the Office of Disability Employment Policy (ODEP) is to provide leadership to increase employment opportunities for adults and youth with disabilities through expanded access to training, education, employment supports, assistive technology, integrated employment, entrepreneurial development and small business opportunities. ODEP fosters the creation of employment opportunities by building partnerships with both public and private sector employers, and with regional and local agencies to: (1) Increase their awareness and experience the benefits of employing people with disabilities, including significant disabilities; and (2) facilitate the use of effective strategies to accomplish this goal.

Workers with disabilities are an important and insufficiently tapped resource for employers. As such, ODEP is committed to ensuring appropriate skills development and training opportunities, and supporting and encouraging the creative use of alternative employment strategies and employment supports for people with disabilities.

In recent years, both the Executive branch and Congress have increasingly promoted telework to help achieve increased employment opportunities for people with disabilities. President George W. Bush believes that the ability to telework increases available employment options for individuals with disabilities, and his New Freedom Initiative directs that activities be undertaken to promote the expansion of telework options.[1]

In the Conference Report to ODEP's Fiscal Year (FY) 2002 appropriation, Congress expressed its intent to set up a program focusing on telework to ''include in these pilots all appropriate positions, whether the work is performed in-house, contracted, or outsourced in the types of jobs which can be performed from home, such as customer service/call contact centers, and claims, loan or financial transaction processing operations.'' [H. Conf. Rep. No. 107–342, 107th Cong., 1st Sess. (2001)]. Integral to the pilots were tailored/individualized training, appropriate technology, and supportive mechanisms (*e.g.*, reasonable accommodations, job coaching, mentoring, customized employment, etc.). Consistent with Congressional intent, ODEP funded one cooperative agreement to establish three pilot demonstration projects within Federal Government agencies to generate viable models, and replication in two other Federal agencies. For each participating agency, Federal contractors implemented the telework/telecommuting employment models. Through its evaluation research component, the project generated data on both the benefits and the challenges encountered in creating home-based telework/telecommuting options for people with significant disabilities in Federal agencies. Final evaluation results from this project are expected by the end of this calendar year.

House Conference Report No. 108–401, 108th Congress, 1st Session (2003), demonstrates Congressional intent to continue pilot research projects focusing on telework for people with disabilities. According to the report, ''The conferees have included $2,500,000 within the Office of Disability Employment Policy to continue the telework efforts already initiated by ODEP. This can include expansion of pilot programs already underway and/or initiation of new telework pilots. ODEP should proceed in an expeditious manner to create telework positions in cooperation with Federal and State agencies. Priority should be given to strategies judged likely to yield the largest number of telework positions for people with disabilities.'' House Conference Report, p. 731.

[1] The President's New Freedom Initiative for People with Disabilities: The 2004 Progress Report, March, 2004. *http://www.whitehouse.gov/infocus/newfreedom/newfreedom-report-2004.pdf*.

In general, ''telework/telecommuting'' is a collective term for a wide variety of work arrangements. For example, teleworkers/telecommuters may be employees or independent contractors working full-time or part-time. In addition, teleworkers/telecommuters may work from home or a telecenter all of the time, or may alternate between the two. For the ODEP telework study of FY 2002, the study defined telework/telecommuting as home-based settings only. For the purposes of this solicitation, telework/telecommuting pilot research applicants will be required to specify the operational definition of the telework/telecommuting model being researched.

As a general matter, telework/telecommuting provides opportunities for employees and employers seeking alternative employment options. For employers, telework/telecommuting can be useful in decreasing certain overhead costs, satisfying fluctuating demands for additional office and parking space, and helping its employees balance work and family demands; and thereby increasing their loyalty, productivity, and likelihood of retention. For certain employees, telework/telecommuting is appealing because it eliminates long commutes, allows for balancing of work and home life, and reduces workplace distractions.

For people with significant disabilities, telework/telecommuting sometimes provides the most viable opportunity to work, due to the lack of reliable and available employment supports, such as transportation and personal assistance. While telework/telecommuting is not a complete solution to the employment barriers encountered by persons with significant disabilities, telework/telecommuting can be an effective way of bringing persons with disabilities into the workforce.

Effective telework/telecommuting policies are the key to successful telework/telecommuting arrangements for persons with and without disabilities. Accordingly, the best practices derived from these projects are likely to have utility extending beyond the employment of people with disabilities to the population generally.

There is also a growing interest in the Federal and State agencies to find ways to lower the cost of workers' compensation. For example, the cost of Federal workplace injuries, when measured by workers' compensation losses, is more than $2 billion and 2 million lost production days annually. In FY 2003, the Federal workforce, of almost 2.7 million, filed more than 168,000 injury claims. (Presidential Memorandum, January 9, 2004).

On January 9, 2004, President George W. Bush announced the Safety, Health and Return-to-Employment (SHARE) Initiative directing Federal agencies to establish goals and track performance in four major areas. Federal agencies are charged with lowering workplace injury and illness case rates, lowering lost-time injury and illness case rates, timely reporting of injuries and illnesses and reducing lost days resulting from work injuries and illnesses. Because telework/telecommuting can provide a viable alternative for Federal and State employees to return to work, exploring ways and strategies to use telework/telecommuting as an option to accelerate the return to employment of Federal and State employees on workers' compensation through this pilot research project will support the SHARE Initiative. (Additional information about the SHARE Initiative can be located at: *http://www.dol-esa.gov/share*.)

There is further interest in the Federal Government to support United States soldiers who are seriously wounded in combat in Afghanistan and Iraq in their successful transition to civilian life. According to published reports, there have been more than 12,000 soldiers injured, with more than 200 soldiers classified as ''seriously wounded.'' Programs, such as the Department of Army and Veteran Affairs' recently established Disabled Soldier Support System (DS3), are designed to assist soldiers in navigating the return from war and maneuvering through the often complex systems of services and agencies, such as rehabilitation, housing, financial services, and employment. Many of these soldiers will need to be re-trained for new careers and employment opportunities. Telework/telecommuting, with the appropriate training, assistive technology, and employment supports, can potentially ease the transition to civilian life. ODEP is interested in research that tests telework/telecommuting models as an alternative strategy for increasing competitive employment for disabled veterans returning from tours of duty.

A final research area of interest to the Federal Government is in filling the gap in the knowledge base regarding telework/telecommuting for people with disabilities from the employer's perspective, particularly related to Federal and State agency employers. In a 2001 survey of over one thousand Federal managers and supervisors, Cornell University found that when asked whether office-based full-time positions that they currently supervised could be relocated to home-based or other off-site facilities, approximately one-third of the white-collar supervisors reported that this was possible. Less than six percent of the blue-collar supervisors saw this as possible. Supervisors of employees with disabilities were more likely to say they would be able to make current positions either home-based or split between the home and office.

When asked about the ability to develop full-time positions that could be performed from home or another off-site location, respondents indicated it would be easier to split such positions between home and off-site, rather than to develop positions full-time that would be dedicated to off-site employment. Supervisors of employees with disabilities viewed the development of these new positions as easier than those without experience with employees with disabilities.

Approximately half of the white-collar supervisors indicated that it would be easy to accommodate an individual with a chronic illness or disability with the ability to work at home for one or two days each week or intermittently. Blue-collar supervisors were far less likely to say that this arrangement would be easy or even possible. Finally, respondents indicated that off-site technology support, with guidelines for performance assessment of off-site workers, and formal flex place agreements between off-site employees and supervisors, would be helpful to them as supervisors in creating or supporting home-based or off-site/telecommuting employee position.[2]

The need to conduct a national survey on telework/telecommuting as a means for increasing employment opportunities for people with disabilities is prompted by two issues: (1) The lack of comprehensive and credible information reflecting attributes hindering and supporting the implementation of telework in public and private work settings; and (2) The lack of national surveys dealing with quantitative aspects of telework for people with disabilities. Information in the existing literature is scant and describes experiences and future plans for telework pilots in limited geographical areas and work settings. There is a need to understand on the national, regional and local levels about those the circumstances and entities

[2] Bruyere, S., Erickson, E., & Horne, R. (2002) Disability Employment Policies and Practices in U.S. Federal Government Agencies: EEO/HR and Supervisor Perspectives. Report by the Presidential Task Force on Employment of Adults with Disabilities. Ithaca, NY: Cornell University.

that have potential to successfully implement teleworking as a common pattern of work for people with disabilities. The anticipated survey is intended to provide an overview and a systematic analysis of the identified experiences and schemes along with factors hindering and supporting the implementation of telework in public and private work settings. Also, a systematic investigation on national basis is needed to develop models of telework/telecommuting schemes, identify the proportion of teleworkers in various occupations, the type of work (tasks), and the type of work arrangements that can potentially be carried out via telework. Additional critical areas warranting further research include benefits and barriers to telework related to characteristics such as productivity, costs, and attitudinal and behavioral aspects from the employer perspective. It is anticipated that the survey results and findings will identify the perceived risks and benefits of telework along with the obstacles and difficulties in implementation of related policy, including insights of what it takes to promote telework-related policy objectives in cultures of work organizations. Finally, this effort is expected to yield an authoritative report along with a tool kit that could be used by public and private organizations alike.

II. Award Information

Estimated Available Funds: $2,500,000.

Estimated Range of Awards: $600,000–$830,000.

Estimated Average Size of Awards: approximately $830,000.

The U.S. Department of Labor's (DOL), Office of Disability Employment Policy, announces the availability of $2.5 million to fund up to three (3) cooperative agreement awards to conduct telework/telecommuting research pilots. Each award will be in the range of $600,000 to $830,000 for a 36-month period of performance, beginning on the date of award. This cooperative agreement will include substantial involvement between ODEP and the awardee during the period of performance. ODEP will provide project oversight throughout the period of the award. ODEP also will be involved in decisions involving the research focus, approaches/methodologies, strategies, allocation of resources, staffing, development of public information materials, and analysis and dissemination of research findings.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants for this DOL Cooperative Agreement are public/private non-profit or for profit organizations or consortia, including faith-based and community organizations, with appropriate capabilities, experience, and expertise.

If the proposal includes multiple consortia members, there must be a prime or lead member who is the responsible fiscal and programmatic agent. All applications must: (1) Clearly identify the lead grant recipient and fiscal agent, as well as all other members of the consortium applying for this cooperative agreement award; (2) provide a clear description of each member's roles and responsibilities; and (3) provide a detailed plan for how the award money will be allocated among the consortium. As a DOL funded initiative, it is expected that the lead grant recipient for any such consortium shall have primary expertise in employment-related areas.

In accordance with section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611), non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

2. Cost Sharing

Cost sharing, matching funds, and cost participation are not required under this SGA.

IV. Application and Submission Information

1. Addresses To Request Application Package

This SGA contains all the information and forms needed to apply for this grant funding. Application announcements or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirements may be downloaded from ODEP's Web site at *http://www.dol.gov/odep* and at *http://www.fedgrants.gov.* If additional copies of the standard forms are needed, they can also be downloaded from: *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

2. Content and Form of Application Submission

General Requirements: To be considered responsive, all applications must be received on time to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Mitchell, Reference SGA 04–12, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Applicants must submit one (1) paper copy with an original signature, and [two (2) additional paper copies of the signed proposal. To aid with the review of applications, DOL also requests applicants to submit an electronic copy of their proposal's Sections II (Executive Summary) and III (Project Narrative) on disc or Compact Disc (CD) using Microsoft Word.] The application (not to exceed 50 pages for Section III), must be double-spaced with standard one-inch margins (top, bottom, and sides) on 8½ × 11-inch paper, and must be presented on single-sided and numbered pages. A font size of at least twelve (12) pitch is required throughout. All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, must be in at least a 12-point font, and must have an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, must not be more than 12 characters per inch). Applications that fail to meet these requirements will be considered non-responsive.

DOL Cooperative Agreement Requirements: The three required sections of the application are:

Section I—Project Financial Plan (No page limit)
Section II—Executive Summary—Project Synopsis (2 pages)
Section III—Project Narrative (Not to exceed 50 pages)

The mandatory requirements for each section are set forth below. Applications that fail to meet the stated mandatory requirements for each section will be considered non-responsive.

Mandatory Application Requirements:

• **Section I. Project Financial Plan (Budget)** [The Project Financial Plan will not count against the application page limits.] Section I of the application must include the following three required parts:

(1) Completed ''SF–424—Application for Federal Assistance.'' Please note that, beginning October 1, 2003, all applicants for federal grant and funding opportunities are required to include a Dun and Bradstreet (DUNS) number with their application. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). The DUNS number is a nine-digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS

number (although it may take 14–30 days). To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711. Requests for exemption from the DUNS number requirement must be made to OMB. The Dun and Bradstreet Number of the applicant should be entered in the ''Organizational Unit'' section of block 5 of the SF 424. (See Appendix A of this SGA for required form.)

(2) Completed SF–424 A—Budget Information Form by line item for all costs required to implement the project design effectively. (See Appendix B of this SGA for required forms)

(3) DOL Budget Narrative and Justification that provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes, including continuous improvement activities.

The DOL Cooperative Agreement application must include one SF–424 with the original signatures of the legal entity applying for Cooperative Agreement funding and two additional copies. The individual signing the SF–424, on behalf of the applicant, must represent and be able to legally bind the responsible financial and administrative entity for a Cooperative Agreement should that application result in an award. Applicants shall indicate on the SF–424 the organization's Internal Revenue Service (IRS) Status, if applicable.

The DOL Budget Narrative and Justification must describe all costs associated with implementing the project that are to be covered with Cooperative Agreement funds. The applicant must support the travel and associated costs of sending at least one representative to periodic meetings with DOL staff in Washington, DC (at least once per quarter) and to the annual ODEP Policy Conference for its grantees, to be held in Washington, DC, at a time and place to be determined. [The applicant must comply with the ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' (also known as OMB Circular A–102''), codified at 29 CFR part 97, or ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations' (also known as the ''Common Rule'' or OMB Circular A–110), codified at 29 CFR part 95.

In addition, the budget submitted for review by DOL must include, on a separate page, a detailed cost analysis of each line item. The costs listed in the detailed cost analysis must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b). Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The applicant must also include the Assurances and Certifications Signature Page (Appendix C) and the Survey on Ensuring Equal Opportunity for Applicants (Appendix D).

- *Section II. Executive Summary—Project Synopsis:* The Executive Summary is limited to no more than two single-spaced, single-sided pages on 8½ × 11-inch paper with standard margins throughout. Each application shall include a project synopsis that identifies the following:

(1) The applicant;

(2) The planned period of performance;

(3) The list of partners, as appropriate; and,

(4) An overview of how the applicant will conduct the research, analyze the data and present the findings.

- *Section III. Project Narrative:* The DOL Cooperative Agreement Project Narrative is limited to no more than fifty (50), 8½ × 11 pages, double-spaced with standard one-inch margins (top, bottom, and sides), and must be presented on single-sided, numbered pages. [Note: The Financial Plan, the Executive Summary, and the Appendices, including letters of cooperation, resumes, etc., are not included in this fifty-page limit].

3. Submission Dates, Times, and Addresses

Applications will be accepted commencing July 8, 2004. The closing date for receipt of applications by DOL under this announcement is August 9, 2004.

Applications, including those hand-delivered, must be received by 4:45 p.m. (ET) at the address specified below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will be considered non-responsive.

Applications must be mailed or hand-delivered to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Mitchell, Reference SGA 04–12, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. Telefascimile (FAX) applications will not be accepted.

Hand-Delivered Proposals. It is preferred that applications be mailed at least five (5) days prior to the closing date. Hand-delivered applications will be considered for funding, but must be at DOL by the above specified date and time. Overnight or express delivery from carriers other than the U.S. Postal Service will be considered hand-delivered applications. Failure to adhere to the above instructions will serve as a basis for a determination of non-responsiveness.

Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures and may wish to take this information into consideration when preparing to meet the application deadline.

Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will be considered non-responsive, unless it is received before awards are made and it: (a) Is determined that its late receipt was caused by DOL error after timely delivery to the Department of Labor; (b) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (c) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two (2) working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and Federal holidays. ''Postmarked'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Withdrawal of Applications. An application that is timely submitted may be withdrawn by written notice or telegram (including mailgram) at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

A. Funding Levels

The total funding available for this solicitation is $2.5 million. Up to three

(3) awards in the range of $600,000 to $830,000 each will be made. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding $830,000 will be considered non-responsive. Additionally, there will be no reimbursement of pre-award costs.

B. Period of Performance

The period of performance will be for 36 months from date of the award unless modified. It is expected that the successful applicant will begin program operations under this solicitation immediately upon receiving the ''Notice of Award.''

C. Option Year Funding

Not applicable.

D. Limitation on Indirect Costs

Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated approved, and signed indirect cost agreement must be submitted with the application. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. The successful applicant will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of the cooperative agreement award.

V. Application Review Information

1. Criteria

In response to Executive branch and Congressional initiatives, the main thrust of this effort is to generate knowledge and understanding of the impact of telework/telecommuting arrangements and identify evidence-based approaches and strategies that would enhance the employment of people with disabilities in Federal and State agencies. Hence, each proposal must ensure that each project has sufficient sample size and methodological rigor to generate robust findings.

Applicants will be required to address a minimum of two (2) of the following priorities in their applications.

1. Using telework as a return-to-work strategy specifically for people with disabilities receiving Federal and State Workers' Compensation.

2. Using telework as an alternative strategy for increasing competitive employment for disabled veterans returning from tours of duty.

3. To survey public (Federal and State agencies) and private employers in order to identify supporting conditions and strategies that are necessary to effectively implement and sustain telework for people with disabilities.

In addition, applicants will be required to: (1) Collaborate with Federal and State agencies to identify positions that will yield the greatest number of telework opportunities for people with disabilities and ensure the recruitment of research participants so that each sample population is appropriate and of sufficient size; (2) identify the impact of telework on productivity, performance, and costs-benefits; (3) disseminate research findings to stakeholders, using accessible formats; (4) evaluate impact of the research findings on increasing employment opportunities for people with disabilities using telework strategies validated through the research. Finally, applicants will be required to cooperate with ODEP's External Evaluation Contractor in order to conduct an independent evaluation of project activities and outcomes.

Applicants are requested to address the identified priorities by formulating research questions that are significant and relevant to the stated priorities. Proposals are expected to include clearly defined research designs, including but not limited to, surveys, quasi-experimental studies, observational research methodologies and others. After selection, depending upon the type of questions specified and research design proposed, ODEP reserves the right to modify or substitute as appropriate. Also, investigators will be required to develop outcome measures, instruments, and data analysis procedures so that study findings are reportable.

In review of applications, proposals will be evaluated under the following evaluation criteria and maximum possible point scores.

A. Significance of the Proposed Project (10 Points)

In determining the significance of the proposed project, DOL considers the following factors:

i. The potential contribution of the proposed research to increase knowledge or understanding of the stated problems, issues, or effective strategies;

ii. The extent to which the research activities proposed reflect a coherent, sustained approach to research in the field, including a substantial addition to the existing literature;

iii. The extent to which the proposed research is likely to yield findings that may be used by other appropriate agencies and organizations;

iv. The extent to which the proposed project involves the development or demonstration of promising new strategies that build upon, or are alternatives to, existing strategies;

v. The extent to which the plans for dissemination and reporting of results and findings are of sufficient quality, intensity, and accessible to individuals with disability;

vi. The extent to which collaboration with Federal and State agencies, people with disabilities, other relevant stakeholders, and ODEP's external evaluation contractor is likely to be effective in achieving the proposed activities.

B. Quality of the Research Design (25 Points)

In evaluating the quality of the proposed research design, the Department considers the following factors:

i. The extent to which the methodology of each proposed research activity is meritorious, including a comprehensive and informed review of the current literature, appropriateness of the sample population and size;

ii. The extent to which the proposal provides a comprehensive description of a research plan that outlines specific elements of the anticipated research;

iii. The extent to which the goals, objectives, and outcomes to be achieved by the proposed research project are clearly specified and measurable;

iv. The extent to which the design of the proposed project incorporates measures adequate to facilitate external evaluation by ODEP's external evaluation contractor;

v. The extent to which the design of the proposed project is appropriate to, and will successfully address the needs of the target population and other identified needs;

vi. The adequacy of the documentation submitted in support of the proposed research design to demonstrate the commitment of each applicant and affiliated partners and the quality of the plan that the applicant will use to recruit, enlist, and secure cooperation of other experts.

C. Quality of Project Personnel (15 Points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. In addition, the Department considers the qualifications, including relevant education, training and experience of key project personnel, as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the

appendices. Key personnel include positions such as: Principle Investigator, Project Director, Project Coordinator, Project Manager, Research Analyst, *etc.* Minimum qualifications should be commensurate with the role identified in the application. In addition, the applicant must specify the percentages of time dedicated by each key person on the project in their application.

D. Budget and Resource Capacity (10 Points)

In evaluating the capacity of the applicant to carry out the proposed project, DOL considers the following factors:

i. The applicant's demonstrated experience and expertise in conducting research on telework, employment and disability issues;

ii. The extent to which the budget is adequate to support the proposed research project; and

iii. The extent to which the anticipated costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

E. Quality of the Management Plan (25 Points)

In evaluating the quality of the management plan for the proposed project, DOL considers the following factors:

i. The extent to which the management plan for project implementation appears likely to achieve the objectives of the proposed project on time and within budget, and includes clearly defined staff responsibilities, time allocation to project activities, time lines, milestones for accomplishing project tasks, and project deliverables;

ii. The adequacy of mechanisms for ensuring the dissemination of high-quality products, including the reporting of research findings for the proposed project; and

iii. The extent to which the time commitments of the principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

F. Quality of Data for Project Evaluation (15 Points)

In evaluating the quality of data to be generated, in order to assess the impact of the research findings, DOL considers the following factors:

i. The extent to which the research methods include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative evaluative and reportable data;

ii. The extent to which the evaluation will provide information to the Federal and State governments and other employers about effective telework/telecommuting strategies suitable for replication or testing in other settings.

2. Reviews and Selection Process

Applications will be reviewed for compliance with the requirements of this notice. A careful evaluation of applications will be made by a technical review panel, which will evaluate the applications against the rating criteria listed in this Solicitation for Grant Announcement. The panel results are advisory in nature and not binding on the Grant Officer. DOL may elect to award grants with or without discussion with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF–424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering such factors as:

- Panel findings; and,
- Availability of funds.

3. Anticipated Announcement and Award Dates

Not applicable.

VI. Award Administration Information

1. Award Notices. All awards will be posted on ODEP's Web site at *http://www2.dol.gov/odep.* Successful and unsuccessful applicants will be notified of the results.

2. Administrative and National Policy Requirements. All awardees will be subject to applicable Federal laws, regulations, and OMB circulars. Applicants are strongly encouraged to read the following regulations before submitting a proposal. The Cooperative Agreement awarded under this SGA shall be subject to the following as applicable:

- 29 CFR Part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR Part 96—Audit Requirements for Grants, Contracts, and Other Agreements.

Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable federal cost principles:

- Nonprofit Organizations—OMB Circular A–122
- Profit-Making Commercial Firms '' 48 CFR Part 31

Profit will not be considered an allowable cost in any case.

Cooperative Agreement Assurances

As a condition of the award, the applicant must certify that it will comply fully with the following nondiscrimination and equal opportunity regulations:

- 29 CFR Part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964;
- 29 CFR Part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance (Implementing Section 504 of the Rehabilitation Act, 29 U.S.C. 794);
- 29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*); and
- 29 CFR Part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938).

The applicant must include assurances and certifications that it will comply with these laws in its Cooperative Agreement application. The assurances and certifications are attached as Appendix C.

3. Reporting and Monitoring

ODEP is responsible for ensuring the effective implementation of this Cooperative Agreement, in accordance with the provisions of this announcement and the terms of the Cooperative Agreement award document. Applicants should assume that ODEP staff will conduct on-site project reviews periodically. Reviews will focus on timely project implementation, performance in meeting the Cooperative Agreement's objectives, tasks and responsibilities, expenditures of Cooperative Agreement funds on allowable activities, and administration of project activities. Projects may be subject to other additional reviews, at the discretion of the ODEP staff or their announced designees.

The DOL Cooperative Agreement awardee, under this competition, will be required to submit to DOL quarterly

financial and narrative program progress reports for each quarter funded. The awardee will be required to submit periodic financial and participation reports. Specifically, the following reports will be required:

A. *Quarterly reports:* The quarterly report is estimated to take ten hours to complete. The form for the Quarterly Report will be provided by the ODEP. The ODEP will work with the awardee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction. Quarterly reports will be due 30 days after the close of the quarters of each Federal fiscal year. This report will be filed using an on-line reporting system.

B. *Standard Form 269:* Financial Status Report Form (FSR) will be completed on a quarterly basis, using the on-line electronic reporting system.

C. *Final Project Report:* The final report will include an assessment of project performance and outcomes achieved. The final report is estimated to take twenty (20) hours to complete. This report will be submitted in hard copy and on electronic disk complying with format and instructions provided by the ODEP. An outline of the final report is due to ODEP forty-five (45) days before termination of the Cooperative Agreement with a draft of the final report due to ODEP thirty (30) days before the termination of the Cooperative Agreement. The final report is due to ODEP no more than thirty (30) days after the termination of the Cooperative Agreement.

The awardee must agree to cooperate with independent evaluations to be conducted by ODEP. ODEP or its designee will arrange for and conduct this independent evaluation of the outcomes, impact, and accomplishments of the project. The awardee must agree to make available records on all parts of project activity, including participant related data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the ODEP. This independent evaluation is separate from any proposed ongoing evaluation for continuous improvement commissioned by the awardee.

VII. Agency Contacts

For information on this DOL Cooperative Agreement and related items contact Cassandra Mitchell, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact Cassandra Mitchell, via the Federal Relay Service, (800) 877–8339. Applications, announcements, or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. This announcement and the award notifications will also be published on the Internet on the ODEP's online Home Page at: *http://www.dol.gov/odep* and at *http://www.fedgrants.gov.*

Signed at Washington, DC this 25th day of June, 2004.

Johnny A. Arnold, II,

Acting DOL Grants Officer.

Appendices:

Appendix A: Application for Federal Assistance SF 424

Appendix B: Budget Information Sheet SF 424A

Appendix C: Assurances and Certifications Signature Page

Appendix D: Survey on Ensuring Equal Opportunity for Applicants

BILLING CODE 4510–CX–P

APPLICATION FOR FEDERAL ASSISTANCE Version 7/03

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ **Construction** ☐ **Non-Construction**	Pre-application ☐ **Construction** ☐ **Non-Construction**	**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	**Organizational Unit:** Department:
Organizational DUNS:	Division:
Address: Street:	**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: First Name:
City:	Middle Name
County:	Last Name
State: Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) Fax Number (give area code)

8. TYPE OF APPLICATION: ☐ **New** ☐ **Continuation** ☐ **Revision** If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify) **9. NAME OF FEDERAL AGENCY:**
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program): **12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):*	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
13. PROPOSED PROJECT Start Date: Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

Appendix A

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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Appendix B

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Appendix C

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED June 29, 2004

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SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

[FR Doc. 04–15521 Filed 7–7–04; 8:45 am]

BILLING CODE 4510–CX–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–082]

NASA Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee (SSUAS).

DATES: Wednesday, July 28, 2004, 8 a.m. to 5 p.m., Thursday, July 29, 2004, 8 a.m. to 5 p.m. and Friday, July 30, 2004, 8 a.m. to 12 noon.

ADDRESSES: Center for Advanced Space Studies, 3600 Bay Area Blvd, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Donald A. Thomas, Code U, National Aeronautics and Space Administration, Houston, TX 77058, (281) 483–7211.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting will include the following topics:

- Status on U.S. Vision for Space Exploration and its relationship to Research on International Space Station
- Program Reports from the Office of Biological and Physical Research and the International Space Station Program
- International Space Station Payload Operations
- Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–15544 Filed 7–7–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CAPITAL PLANNING COMMISSION

Adoption of Final Environmental and Historic Preservation Policies and Procedures

AGENCY: National Capital Planning Commission.

ACTION: Announcement of the adoption of Final Environmental and Historic Preservation Policies and Procedures.

Authority: National Environmental Policy Act and National Historic Preservation Act.

SUMMARY: On April 1, 2004, the National Capital Planning Commission adopted its updated and revised Environmental and Historic Preservation Policies and Procedures. The Policies and Procedures were originally adopted on September 13, 1979 and amended on September 3, 1981, October 21, 1982. The revised policies adopted on April 1, 2004 represent the first wholesale revisions and updating of the policies in over twenty years.

A draft of the revised Policies and Procedures was originally published in the **Federal Register** for public comment on September 25, 2000. Following the receipt and consideration of comments, a revised draft was presented during an information presentation on the draft policies and procedures at the February 5, 2004 Commission meeting. Copies of the revised draft were made available for review on NCPC's Web site and upon request on December 29, 2003.

In drafting the revised policies and procedures, NCPC consulted with the Council on Environmental Quality (CEQ), the Advisory Council on Historic Preservation, and took into consideration valuable input from members of the public who provided testimony and written comments early in the review process. In addition, NCPC considered the recommendations of the CEQ's September 2003 NEPA Task Force report ''Modernizing NEPA Implementation.''

The revised and updated policies and procedures update and clarify NCPC's existing environmental and historic preservation policies and procedures in the following significant areas: (1) Making more explicit the levels of compliance with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act required for each stage of NCPC's review of a project or master plan; (2) requiring a clearly defined NEPA scoping process; (3) expanding the public participation requirements during compliance with NEPA and Section 106; (4) integrating more closely the NEPA and Section 106 compliance processes; and (5) updating and revising NCPC's list of categorical exclusions under NEPA.

DATES: The Final Environmental and Historic Preservation Policies and Procedures were adopted on April 1, 2004.

ADDRESSES: Copies of the final Environmental and Historic Preservation Policies and Procedures can be requested at NCPC's offices at 401 9th Street, NW., Suite 500, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Copies of the Policies and Procedures can be obtained at NCPC's offices and Web site, *www.ncpc.gov*, or by contacting Mr. Eugene Keller, NCPC's Environmental Officer at 202–482–7200 or by e-mail at *gene.keller@ncpc.gov*.

SUPPLEMENTARY INFORMATION: The polices and procedures as adopted on September 13, 1979 and amended on September 3, 1981, October 21, 1982, and April 1, 2004, are as follows (excluding Appendices, which may be obtained directly from NCPC:

Section 1. Purpose

The National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*, requires federal agencies to carefully consider environmental impacts in their decisions. All federal agencies must direct, to the fullest extent possible, their policies, plans, and programs to protect and enhance environmental quality. These procedures adopt and supplement the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA and describe the way the National Capital Planning Commission, beginning at an early point in its decision making process, considers the environmental and historic aspects of proposed actions that it may review and approve. The Commission's goals are to avoid or minimize adverse environmental consequences and enhance its decision processes based on a better understanding of environmental and historic resources impacts. In addition, these procedures provide guidance for early implementation of Section 106 of the National Historic Preservation Act (NHPA) in conjunction with NEPA.

The policy and procedures serve three primary functions. First, the National Capital Planning Commission must meet the requirements of NEPA for projects the Commission sponsors or co-sponsors as major federal actions that may significantly affect the environment. Second, the Commission must adhere to and meet the objectives of NHPA and its Section 106 process

when the Commission is the sole federal agency or acting in a specific approval authority that will constitute a federal undertaking subject to the Section 106 process. Third, the procedures provide guidance to other federal agencies by outlining the required documentation that must accompany each project or master plan submission to the Commission, and which will be acted upon in accordance with the Commission's authority.

In addition to NEPA and NHPA, the Commission will consider other environmental mandates during its decision making process including but not limited to:

1. Executive Order 12898, Environmental Justice
2. Clean Air Act, as amended
3. Endangered Species Act, as amended
4. Resource Conservation and Recovery Act
5. Executive Order 11988, Floodplain Management
6. Executive Order 11990, Protection of Wetlands
7. Federal Communications Commission Guidelines for Evaluating the Environmental Effects of Radiofrequency Emissions.

With regard to NHPA, these procedures require all submitted projects and plans to provide relevant information about conformance with NHPA as required by Section 106 of the Act. The applicant must submit documentation indicating compliance with the Section 106 process. However, the Section 106 compliance documentation may be combined and should be coordinated with NEPA documents when possible. Submission of Section 106 documentation is required regardless of the status of NEPA compliance. See Sections 4, 5, 7, and 8 of the procedures and Appendices A and B for specifics.

Section 2. Explanation of Abbreviations and Terms

''Advisory Council on Historic Preservation or Advisory Council'' refers to an independent federal agency that was established by NHPA in 1966 and provides a forum for influencing federal activities, programs, and policies as they affect historic resources.

''Adverse Effect'' refers to a determination that an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, are distant by location, or may be cumulative.

''Categorical Exclusion'' (CX) means a category of actions that have been found by the Commission, in accordance with 40 CFR 1507.3, to not require an Environmental Assessment or an Environmental Impact Statement based on the lack of significant individual or cumulative environmental effects of the actions, absent extraordinary circumstances.

''CEQ'' refers to the Council on Environmental Quality.

''Commission'' refers to the National Capital Planning Commission, which was created by the Planning Act.

''Compelling reason'' refers to the situation of taking historic properties into limited account during the planning of a project which responds to a disaster or emergency declared by the President, Governor of a State, or local government official that responds to immediate threats to life or property, and that the scope and timing of the planning steps are not phased to reflect the agency official's consideration of project alternatives in the NEPA process and that the decision expressed is commensurate with the assessment of other environmental factors.

''Comprehensive Plan'' refers to the *Comprehensive Plan for the National Capital*, which was prepared and adopted pursuant to the Planning Act.

''Cooperating agency'' means any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

''Council'' refers to the Council of the District of Columbia, as defined in Section 103 of the Home Rule Act.

''Environmental Impact Statement'' (EIS) is a detailed written statement as required by Section 102(2)(C) of NEPA.

''Environmental Assessment'' (EA) is a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

''Environs'' refers to the territory surrounding the District of Columbia within the National Capital Region as defined in 40 U.S.C. 8702.

''EPA'' refers to the United States Environmental Protection Agency.

''Executive Director'' refers to the director employed by the Commission pursuant to Section 2(c) of the Planning Act.

''Finding of No Significant Impact'' (FONSI) refers to a document by a federal agency that briefly presents the reasons why an action, not otherwise excluded, will not significantly affect the environment. It shall include the EA or a summary of it.

''Home Rule Act'' refers to the District of Columbia Self-Government and Governmental Reorganization Act (December 24, 1973, 87 Stat. 774).

''Historic property'' refers to any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

''Mayor'' refers to the Mayor of the District of Columbia, as defined in Section 103 of the Home Rule Act.

''Memorandum of Agreement'' refers to the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

''National Capital'' refers to the District of Columbia and territory owned by the United States within the environs.

''National Historic Landmark'' refers to a historic property that the Secretary of the Interior has designated a National Historic Landmark.

''National Register of Historic Places'' refers to the nation's official list of cultural resources worthy or preservation. Authorized under the National Historic Preservation Act of 1966, the National Register is part of national program to coordinate and support public and private efforts to identify, evaluate, and protect historic and archaeological resources.

''NEPA'' refers to the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*).

''NEPA document'' refers to a Categorical Exclusion determination, an Environmental Assessment, an

Environmental Impact Statement, or any other environmental document identified in CEQ NEPA Regulations, 40 CFR 1508.10.

''Newly acquired site involving a project'' refers to any land area with boundary limits that is proposed to be improved upon from an undeveloped or un-built condition, including but not limited to, building construction or other built structure with or without related site improvements, or site development, such as grading, any landform modification, landscaping, street, or road extensions.

''NHPA'' refers to the National Historic Preservation Act, (Pub. L. 89–665 as amended).

''Planning Act'' refers to the National Capital Planning Act of 1952, as amended (40 U.S.C. 8721 *et seq.*).

''Programmatic Agreement'' refers to a document that governs the implementation of a particular program of the resolution of adverse effects from certain complex project situations or multiple undertakings where historic properties are involves.

''Protect confidentiality concerns of affected parties'' refers to the need to protect limited sources of information pertaining to historic or archaeological resources related to their location, quality, quantity, disposition or other important aspect, which may jeopardize their existence and importance as a Section 106 resource, or other properties that meet the National Register criteria.

''Record of Decision'' (ROD) refers to a concise public record of an agency's decision in cases requiring EISs that is prepared in accordance with 40 CFR 1505.2.

''Redevelopment Act'' refers to the District of Columbia Redevelopment Act of 1945, as amended.

''Region'' refers to the National Capital Region as defined in Section 1(b) of the Planning Act.

''Section 106 consultation'' refers to the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process. The Secretary's ''Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act'' provide further guidance on consultation.

''Section 106 process'' refers to Section 106 of the NHPA as implemented by the Advisory Council's Regulations, 36 CFR, Part 800 — Protection of Historic Properties.

''Site Proposal'' refers to the geographical location of a planned action.

''State Historic Preservation Officer''(SHPO) refers to the official appointed or designated, pursuant to section 101(b)(1) of NHPA, to administer the state historic preservation program or a representative designated to act for the State Historic Preservation Officer.

''Undertaking'' means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

''Zoning Act'' refers to the Act of June 20, 1938, 52 Stat. 797, as amended.

''Zoning Commission'' refers to the Zoning Commission created by Section 1 of the Act of March 1, 1920, 41 Stat. 500, as amended.

''Zoning Regulations'' refers to the regulations, including the maps, and amendments thereto, promulgated by the Zoning Commission pursuant to the Zoning Act.

Section 3. Policy

In its planning and decision making, the Commission will use all practicable means and measures to further the National Environmental Policy set forth in Section 101 of NEPA and the Section 106 process of NHPA. To the maximum extent practicable, the Commission will ensure that its actions protect and, where possible, improve the quality of the human environment including the built and sociocultural environments of the National Capital Region. This effort will improve and coordinate the federal plans, functions, programs, and resources to carry out both the policy set forth in NEPA and the purposes of the Planning Act, the Zoning Act, and other statutes granting the Commission a planning and regulatory role.

The Executive Director, in conformance with this policy, will use the NEPA review process prescribed in the CEQ regulations as a practical planning procedure, and integrate the NEPA review process and the Section 106 processes into decision making in an efficient manner. The Executive Director will seek to avoid and minimize adverse effects to historic properties and to inform the Commission and the public of significant environmental impacts and reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. These efforts will be initiated at the earliest possible stage in planning any Commission-sponsored action. The Commission will ensure that it has reviewed and fully understood the environmental and historic impacts of requested action decisions before making relevant decisions.

Moreover, it is the policy of the Commission that in those limited circumstances where applicable, the Commission shall adhere to the provisions of Section 110(d), (e), and (f) of the NHPA and, consistent with the Commission's mission and mandates, shall carry out programs and projects (including those under which any federal assistance is provided or any federal license, permit, or other approval is required) in accordance with the purposes of the NHPA and give consideration to programs and projects which will further the purposes of the NHPA. Furthermore, in accordance with Section 112 of the NHPA, the Executive Director shall assure that all actions taken by employees or contractors of the Commission shall meet professional standards under regulations developed by the Secretary of the Interior, in consultation with the Advisory Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

Section 4. Commission Decision Points

The Commission will begin its NEPA review as soon as possible after receiving a complete proposal submission and shall independently evaluate and verify the accuracy of information received from an applicant in accordance with 40 CFR 1506.5(a). Federal agencies making submissions involving an EIS or EA will seek to have the Commission participate as a cooperative agency during the submitting agency's preparation of the NEPA document. IF cooperating agency status of the Commission is not established, delay in the requested approval by the Commission may occur when necessary.

(A) *Federal, District, and Non-federal projects subject to Commission approval.* The Commission review and approval of proposed federal, District of Columbia, and non-federal plans, projects and acquisitions of real property are described herein in relation to the Commission's Project Plans Submission Requirements, Master Plan Submission Requirements, or Submission Requirements for Antennas on Federal Property. Generally, projects are submitted as a Concept proposal, a Preliminary design, and a Final design

in compliance with the preceding requirements. Furthermore, the Commission requires that the following environmental documents (NEPA Environmental Assessment, Environmental Impact Statement, or a Categorical Exclusion determination) and NHPA Section 106 process information accompany the request for an approval decision:

1. *Master Plan Approval*—In requesting an approval of a final master plan, the submitting agency shall submit, at a minimum, an Environmental Assessment as specified at Section 10 of these procedures and provide documentation of completion of the Section 106 process. In a submission requiring either an Environmental Assessment or an Environmental Impact Statement, the final determination resulting from the document *must be* completed and signed by the responsible federal lead agency *prior to* the submission of the proposal to the Commission for review.

2. *Site Proposal Approval*—In requesting the approval of a site for a commemorative work authorized under the Commemorative Works Act of 1986, 40 U.S.C. 8905(a), or other law providing for separate site and design proposals, the submitting agency shall submit an environmental document that considers the potential environmental effects of a site selection decision upon the proposed site and a reasonable range of alternative sites. The level of detail in the environmental analysis should be proportional to the scope of the site decision, including consideration of design guidelines and other criteria required by 40 U.S.C. 8905(b), and should defer detailed consideration of the effects of the design approval decision to a subsequent environmental document, to the extent that detailed consideration of alternative design proposals is impractical. The submitting agency may tier their environmental documents for design proposals to eliminate repetitive discussions of issues and to focus on the issues that are ripe for decision at the site and design approval stages. The federal agency shall, in accordance with Sections 800.3 and 800.4 of 36 CFR, Part 800, submit documentation demonstrating that it has identified consulting parties to the extent possible, established a public participation plan for the commemorative works approval process and identified, in consultation with the appropriate SHPO, the Commission and other consulting parties, the historic properties at the sites being considered for the commemorative work.

3. *Concept Proposal Approval*—In requesting a concept approval, the submitting agency shall not be required to provide an environmental document of Section 106 process documentation, with the exception of a conceptual design for commemorative works authorized under the Commemorative Works Act of 1986, 40 U.S.C. 8905(a). For a commemorative work conceptual design, the submitting agency shall ensure that the NEPA and Section 106 requirements for a preliminary plan approval are completed in advance of submission. However, the final determination on an Environmental Assessment or an Environmental Impact Statement prepared for a commemorative work concept design must only be completed and may be signed by the responsible federal lead agency prior to submission to the Commission.

4. *Preliminary Plan approval*—In requesting preliminary plan approval, the submitting agency shall submit an environmental document as specified at Sections 8, 9, or 10 of these procedures. In a submission requiring either an Environmental Assessment or an Environmental Impact Statement, the final determination resulting from the document *must be* completed and signed by the responsible federal lead agency *prior to* the submission of the proposal to the Commission for review. If applicable, the submitting agency shall provide documentation demonstrating that the Section 106 process has at least been initiated with the appropriate SHPO at the time of submission in accordance with Section 800.3 of 36 CFR, Part 800. The federal agency should also demonstrate compliance with the Section 106 process through 36 CFR 800.4 in consultation with the appropriate SHPO. The federal agency should establish the likely presence of historic properties with an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO and any other consulting parties, including the Commission. Consulting parties and other interested parties should be identified to the extent possible at this phase. Where alternatives under consideration consist of large land areas, generalized site areas, yet-to-be-defined specific design qualities and characteristics, or where access to properties is restricted, the applicant may use a phased process to conduct identification and evaluation efforts for Section 106 purposes. Deferral of final identification and evaluation of historic properties effects may occur if the documents used by the applicant comply with the National Environmental Policy Act and the Section 106 process pursuant to Sec. 800.8(c) of 36 CFR, Part 800.

If the agency is able to make an assessment of adverse effects pursuant to Sec. 800.5, in consultation with the appropriate SHPO, that information should be included in the submission. However, the Finding pertaining to the Environmental Assessment or the Record of Decision derived from the Environmental Impact Statement must reflect the agency's determination of effect under Section 800.5 of 36 CFR, Part 800 even though the Section 106 process may not have been completed.

5. *Final Plan approval*—In requesting final plan approval, the submitting agency shall comply with the environmental document requirements for preliminary plan approval and shall provide documentation demonstrating completion of the Section 106 process, including all requirements of Section 800.6 of 36 CFR, Part 800.

(B) *Legislative Proposals.* The Commission, in the development of Commission-initiated legislative proposals that would affect the environment, will include in any recommendation or report to Congress relevant NEPA documentation. The document will be available as part of the formal transmittal of a legislative proposal to Congress or up to 30 days later in order to allow time for completion of an accurate legislative environmental impact statement consistent with 40 CFR 1506.8.

(C) *Land Acquisitions.* Prior to the Commission's acceptance of custody and accountability (for federal lands), or acceptance of an offer to donate or contract for purchase (for private lands), the Commission will complete the necessary NEPA document and all necessary Section 106 process requirements including, but not limited to, those set forth in 36 CFR, Subpart B, Sections 800.3, 800.4, 800.5 and 800.6.

(D) *Non-federal projects subject to Commission Approval.* Non-federal applicants shall prepare the necessary NEPA and Section 106 documents, in conformance with the respective CEQ and Advisory Council requirements, according to the specifications set out in subsection (A) of this section. However, the Commission will make an independent evaluation of the NEPA document and will be the responsible lead federal agency for NEPA purposes, if there is no other anticipated federal agency involvement. When the non-federal applicant uses an existing NEPA document prepared by any other entity, the Commission will take responsibility

for the scope and contents of the environmental document if it is sufficient as required by regulations. See 40 CFR, 1506.3 and 1506.5. The Commission will review another federal agency's NEPA document, as provided for in Section 12 of these procedures, and may adopt the document if it meets the standards for an adequate document as specified by CEQ regulations. Otherwise, the Executive Director will require preparation of a subsequent NEPA document noting in the draft NEPA document why the original submitted text was considered inadequate. Where the Commission acts as lead agency, or as a cooperating agency where appropriate, an EIS or EA involving a non-federal applicant may be prepared for the Commission by a contractor that the Commission selects and funded by the applicant in accordance with 40 CFR 1506.5(c). The contractor shall provide a disclosure statement pursuant to 40 CFR 1506.5(c).

(E) *Emergency Actions.* Where emergency circumstances make it necessary for the Commission to take an action with significant environmental impact without observing the provisions of these procedures, the Commission or the Executive Director must, as soon as practicable, consult with CEQ regarding alternative arrangements for NEPA compliance.

Section 5. Scoping in the Commission NEPA Process

NCPC and all applicants to the Commission shall engage in scoping prior to preparation of the applicable NEPA document. *Scoping* means determining the scope or range of environmental and historic resource analysis needed and that must occur in preparing either an EA or EIS. Scoping is discussed in the CEQ regulations largely in the context of EIS preparation but there shall be scoping for the preparation of an EA as recently augmented by CEQ discussions. Scoping is a key effort to help eliminate unimportant issues, focus the analysis on important issues, and prevent redundancy and excess bulk in documents. At minimum, the Executive Director shall ensure that the scoping process includes:

(A) Participation of affected federal, state, and local agencies, any affected Indian Tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds). 36 CFR, Subpart B, Section 800.3 ''Initiating the Section 106 Process'' is applicable to this effort and must be demonstrated.

(B) Determining the significant issues that will require in-depth analysis. 36 CFR, Subpart B, Section 800.3 ''Initiating the Section 106 Process'' is applicable to this effort and must be demonstrated.

(C) Identifying and eliminating from detailed study the issues that are not significant or have been covered by prior environmental review. In narrowing the discussion of issues, a brief presentation of why they will not have a significant effect on the human environment, or a reference to their coverage elsewhere, *must* be provided.

(D) Allocating assignments for preparing the NEPA document if necessary.

(E) Indicating any Environmental Assessments or Environmental Impact Statements (available, or that will be prepared) that relate to, but are not part of, the scope of the project under consideration.

(F) Identifying other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the project.

(G) Indicating the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(H) At the direction of the Executive Director, establishing the type of scoping for a specific action sponsored by the Commission, and which specific methods of obtaining agency, Tribal, applicant, and other public participation may be used. 36 CFR, Subpart B, Section 800.3 ''Initiating the Section 106 Process'' is applicable to this effort.

Scoping through public involvement, consultations with agencies having jurisdiction by law or expertise, and publication of notices and draft documents, is required by the CEQ regulations for an EIS. Agencies with ''jurisdiction by law'' are those whose permission or assistance may be required by the Commission in order for the action to proceed (*e.g.,* the Army Corps of Engineers if wetlands may be affected), and those with other kinds of regulatory or advisory authority with respect to the action or its effects on particular environmental factors (*e.g.,* the Fish and Wildlife Service or the National Oceanic and Atmospheric Administration with respect to threatened or endangered species under their respective jurisdiction, or the Advisory Council on Historic Preservation with respect to historic properties and the Section 106 Review Process). 36 CFR, Subpart B, Section 800.3 ''Initiating the Section 106 Process'' is applicable to this effort. Continued dialogue and discussions with relevant outside agencies is essential to decisions and to the NEPA process.

Agencies with ''expertise'' are those who are likely to have authoritative information and opinions about the area where the action is proposed, or about environmental impact (*e.g.,* the U.S Geological Survey in the Department of the Interior, or a State Historic Preservation Officer). The Commission expects federal, state, Indian tribal, and local agencies with jurisdiction by law or expertise to be consulted in the NEPA document preparation by the applicant.

Section 6. Applicant NEPA Compliance Obligations

Commission actions involve application to the Commission for review and approval. All submissions will specify accompanying NEPA documents unless the action is categorically excluded from preparation of an EA or EIS at Section 8 of these procedures. Specification of the applicable exclusion must occur. For all submissions to the Commission, the applicant will be required to:

(A) Consult with the Commission as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that the Commission may require to be submitted as part of, or in support of, the request for review.

(B) Conduct studies that the Commission deems necessary and appropriate to determine the environmental impacts of the proposed action. This effort shall at a minimum include an EA or EIS, if necessary, as specified at Sections 10 or 9.

(C) In the instance of a non-federal applicant submission when the Commission may act as lead federal agency, the applicant shall:

1. Consult with affected federal, state, regional and local agencies, American Indian tribes, and other potentially interested parties during the location and preliminary planning stages of the proposed action to identify environmental factors and permitting requirements.

2. Notify the Commission as early as possible of other federal, state, regional, local or American Indian tribal actions required for project completion to allow the Commission to coordinate the federal environmental review, and fulfill the requirements of 40 CFR 1506.2 regarding elimination of duplication with state and local procedures, as appropriate.

3. Notify the Commission of private entities and organizations interested in the proposed undertaking, in order that the Commission can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2).

4. Notify the Commission if the applicant plans to take an action that is within the Commission's jurisdiction that may have an adverse environmental impact or limit the choice of reasonable alternatives. If the Executive Director determines that the action would have an adverse environmental impact or would limit the choice of reasonable alternatives under 40 CFR 1506.1(a), the Executive Director will notify the applicant that the Commission will take appropriate action to ensure that the objectives and procedures of NEPA are achieved in accordance with 40 CFR 1506.1(b).

Section 7. Applicant NHPA Section 106 Compliance Obligations

NHPA Section 106 process information will be provided in all submissions as identified at Section 4(A). Particular additional requirements are applicable as follows and are relevant to the submission circumstances as determined by Executive Director:

(A) *NCPC as the responsible lead federal agency for the undertaking.* It is the statutory obligation of the Commission to fulfill the requirements of Section 106 and to ensure that an Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for Section 106 compliance when the Commission is the responsible lead federal agency for the undertaking. If the Commission is the sole federal agency acting upon the applicant's project or plan, the submitting applicant must provide the Commission with information about an undertaking and its effects on historic properties as soon as Commission involvement is reasonable anticipated. The Executive Director may authorize an applicant to initiate consultation with the SHPO and others, but will remain legally responsible for all findings and determinations if the Commission is the lead federal agency for compliance with Section 106. The Executive Director shall notify the SHPO when an applicant or group of applicants is so authorized. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

If the Commission is the sole federal agency acting upon the submission, the Executive Director will review the proposal as an undertaking as defined in 36 CFR 800.16(y) of the regulations and determine whether it is a type of activity that has the potential to cause effects on historic properties. Each specific submission will provide the necessary information to make a review and determination and will include information specified at 36 CFR, Subpart B, Sections 800.3 ''Initiation of the Section 106 process,'' Section 800.4 ''Identification of Historic Properties,'' Section 800.5 ''Assessment of Adverse Effects,'' and Section 800.6 ''Resolution of Adverse Effects.'' In addition, if applicable, 36 CFR, Subpart B, Section 800.10 ''Special requirements for protecting National Historic Landmarks'' may be necessary.

(B) *Requirements to be achieved when NCPC is the lead responsible agency under Section 106.* Based on the above referenced requirements in paragraph (A) and in conformance with 36 CFR, Subpart B, Section 800.8(c), the Section 106 review shall be carried out in coordination with NEPA review as follows:

1. Conduct Section 106 review when screening a project that may be categorically excluded from NEPA review to see whether ''extraordinary circumstances'' are evident requiring further review (40 CFR 1508.4). Whether such extraordinary circumstances are found to be present will depend on the severity of the impacts and the applicability of the extraordinary circumstances pursuant to Section 8 of these procedures. But even if no further review is required under NEPA, Section 106 review must be completed.

2. During preparation of any EA, conduct Section 106 review in order both to comply with Section 106 itself and to determine whether historic resources will be adversely affected, and if so, whether measures can be implemented to reduce adverse effects to a less than significant level. The results of the review should be reported in the FONSI if one is issued, with an explanation of how Section 106 review has resulted in avoiding significant adverse effect.

3. Section 106 review will be conducted during preparation of any EIS. Scoping identification (see Section 5), and assessment of effects should be done during the analysis leading to the draft EIS, with the results presented in the DEIS. Consultation to resolve adverse effects should be coordinated with public comment on the DEIS, and the results reported in the FEIS. Any Memorandum of Agreement (MOA) developed under Section 106, or the final comments of the Advisory Council, should be addressed in the ROD. Unless there is some compelling reason to do otherwise, the Section 106 MOA will be fully executed before the ROD is issued, and the ROD shall provide for implementation of the MOA's terms.

(C) *Public Involvement in the Section 106 Review Process.* The opinions of the public are essential to informed federal decision making in the NHPA Section 106 process specified above and at Section 4(A). The submitting applicant will seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the federal involvement to the undertaking. This information will be provided to the Commission in all submittals.

Section 8. Categorical Exclusions

The Categorical Exclusion is a ''category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.'' CEQ Regulations, 40 CFR 1508.4.

The Commission has determined the following:

(A) *Criteria for Categorical Exclusion.* Specific criteria for typical classes of action that normally do not require either an Environmental Impact Statement or an Environmental Assessment.

1. Minimal or no effect on the environment.

2. No significant change to existing environmental conditions.

3. No significant cumulative environmental impact associated with the action.

4. Similarity to actions previously assessed with a Finding of No Significant Impact and monitored to confirm the Finding.

(B) *Extraordinary circumstances.* The Executive Director, acting on behalf of the Commission, must consider the characteristics of a project or plans that would require additional environmental review or analysis due to the qualities described below. If these circumstances are present, the application of a Categorical Exclusion would not occur and the appropriate environmental document will be prepared and made available to the Commission prior to its taking action on the item. The

circumstances of such consideration include:

1. Effects of a greater scope or magnitude than normally experienced based on Commission review records for application of a particular Categorical Exclusion.

2. Potential for degradation of existing unsatisfactory environmental conditions.

3. Use of unproven technology.

4. Reasonable evidence of potential adverse effects on an endangered or threatened species, archaeological remains, historic or other protected resources.

5. The action is related to individually insignificant but cumulatively significant environmental effects as described in the Federal Environment Element, the Parks and Open Space Element of the Comprehensive Plan for the National Capital, or other applicable Commission plans or programs.

(C) *Categorical Exclusions.* Actions that normally do not require either an Environmental Impact Statement of an Environmental Assessment include:

1. Repair, replacement, and routine installation of onsite primary or secondary electrical distribution systems.

2. Repair, replacement, and routine installation of components such as windows, doors, roofs; and site elements such as site or building identification signs, sidewalks, patios, fences, retaining walls, curbs, or gates. Additional features include water distribution lines, and sewer lines which involve work that is essentially replacement in kind.

3. Grounds and facility maintenance activities undertaken in accordance with the Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837) and other applicable standards for grounds and facilities management.

4. Procurement activities for goods and services for facility operations maintenance and support in accordance with applicable federal standards for procurement and recycling.

5. Interior construction or renovation involving non-historic structures, or if historic have demonstrated in the Commission submission compliance with the Section 106 process.

6. Reductions in force resulting from federal agency workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

7. A federal interest review of and, as a part thereof, coordinating federal agency comments on, general plans and capital improvement programs of local governments in the Maryland and Virginia portions of the Region and on regional policies and plans of the Metropolitan Washington Council of Governments pursuant to the Commission's function as the central federal planning agency in the Region and in furtherance of the purposes set forth in Section 1(a) of the Planning Act.

8. Review of an action that a District of Columbia agency has submitted and designated as an exclusion in accordance with the requirements and procedures of the District of Columbia Code, Chapter 9, Environmental Controls, Subchapter VI, Section 6–986.

9. Certify to the Council, together with findings and recommendations, whether a District Element of the Comprehensive Plan, or amendment thereto, adopted by the Council has a negative impact on the interests or functions of the Federal Establishment in the National Capital, 40 U.S.C. 8721(b)–(c); D.C. Code 2–1002(a)(4)(A).

10. Determine whether a modification to the District element of the Comprehensive Plan, submitted by the Council, as to which the Commission has certified a negative impact on the interests or functions of the Federal Establishment in the National Capital, has been made in accordance with the Commission's findings and recommendations. 40 U.S.C. 8721(c)(3)(C)–(D); D.C. Code 2–1002(a)(4)(B).

11. Adopt a Federal Element of the Comprehensive Plan or amendment thereto. 40 U.S.C. 8721(a): D.C. Code 2–1003.

12. Submit to the Zoning Commission proposed amendments or general revisions to the Zoning Regulations. 40 U.S. 8724(a); D.C. Code 2–1006(a).

13. Approve changes to highway plans for portions of the District of Columbia prepared by the Mayor, pursuant to D.C. Code 9–103.02, when such plans involve no major traffic volume increase, has a minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action as demonstrated in a submitted District of Columbia Environmental Impact Screening Form (EISF).

14. Approve the sale of real estate owned in fee simple by the District of Columbia for municipal use, which the Council and Commission find to be no longer required for public purposes as specified in 40 U.S.C. 8734(a) when such plans involve no major traffic volume increase, has a minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action as demonstrated in a submitted District of Columbia Environmental Impact Screening Form (EISF).

15. Approve the sale by the Secretary of the Interior of minor parcels of real estate held by the United States in the District of Columbia under the jurisdiction of the National Park Service that may be no longer needed for public purposes. 40 U.S.C. 8735(a); D.C. Code 10–804. Such an action shall be accompanied by a National Park Service NEPA determination that demonstrates a minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action.

16. Approve the exchange of minor parcels of District-owned land, or part thereof, for an abutting lot or parcel of land, or part thereof. 40 U.S.C. 8734; D.C. Code 10–901, when such plans involve minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action as demonstrated in a submitted District of Columbia Environmental Impact Screening Form (EISF).

17. Approve settlements for the purpose of establishing and making clear the title of the United States in land and water in, under, and adjacent to the Potomac River, the Anacostia River, or Eastern Branch, and Rock Creek. D.C. Code 10–102.

18. Approve harbor regulations made by the Council that have a negligible effect upon the interests and rights of the Commission, pursuant to D.C. Code 22–4401.

19. Review and report on special exception applications with the Naval Observatory Precinct District. D.C. Municipal Regulations 11–1533.

20. Review and approval of the installation of communication antennae on federal buildings and co-location of communication antennae on federal property consistent with the General Services Administration Bulletin FPMR D–242, *Placement of commercial antennas on Federal property* and the NCPC Submission Requirements for Antennas on Federal property.

21. Review and approval of acquisition of occupiable space by lease acquision, construction, or expansion, or improvement of an existing facility where *all* of the following conditions are met:

(a) The structure and proposed use are in compliance with local planning and

zoning and any applicable District of Columbia, state, or federal requirements

(b) The proposed use will not substantially increase the number of motor vehicles at the facility;

(c) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings; and

(d) There is no evidence of community controversy or other environmental issues.

22. Review and approval of land exchanges or transfer of jurisdiction that will not lead to anticipated changes in the use of land and that have no potential for environmental impact.

All projects, activities and programs excluded from NEPA review under these procedures shall still be reviewed to determine if the proposal qualifies as an undertaking requiring review under Section 106 of the National Historic Preservation Act, pursuant to 36 CFR, Subpart B, Section 800.3(a).

Section 9. Commission Actions That Normally Require Commission Preparation of Environmental Impact Statements

Because the Commission acts upon a broad range of proposals for action by federal and non-federal applications, each of which represents a unique context and intensity of effects, there are no ''typical classes'' of Commission action that normally requires an EIS, However, the Commission shall consider each specific submission on a case-by-case basis in accordance with the following context and intensity criteria:

(A) *Context.* The significance of proposals for Commission action shall be judged based on the effects of the proposal on society as a whole, the National Capitol region and its environs, the particular interests affected, and effects on the locality or area that is the subject of the proposed action. The context of the proposed action shall be identified by reference to, and in accordance with, the actions and effects considered in the *Comprehensive Plan for the National Capital, National Capital Urban Design and Security Plan, Legacy Plan, Federal Capital Improvements Program* and other applicable Commission plans and programs. Proposals for Commission action that detract or differ substantially from the goals and objectives of Commission plans and programs are generally more likely to be found significant than proposals that are consistent with Commission plans and programs. Proposals for Commission action in or affecting the Monumental Core units of the National Park System, or the water and habitat quality of the Potomac and Anacostia Rivers and other water bodies listed under Section 303(d) of the Federal Water Pollution Control Act are generally more likely to be found significant than proposals that have little or no effect upon those resources.

(B) *Intensity.* The significance of proposals for Commission action shall be judged based on the severity of the proposal's impact on the environment by reference to, and in accordance with, the goals and policies of the Federal Environment Element and Parks and Open Space Element of the *Comprehensive Plan for the National Capital,* and other applicable Commission plans and programs. In considering the effects identified in CEQ regulations, 40 CFR 1508.27(b), effects of proposals for Commission action that are individually or cumulatively inconsistent with, including delay in achievement of, the goals and policies of the Federal Elements or related commission plans and programs are generally more likely to be found significant than proposals that are consistent with Commission goals, policies, plans and programs considering the proposal's effects regarding magnitude, extent, duration, and frequency of consequences on those objectives. The Commission shall specifically consider any effects that are inconsistent with:

1. The Chesapeake Ecosystem Unified Plan, the goals, policies, and initiatives contained in the Chesapeake Bay 2000 Program, and successor or related agreements for the protection and restoration of the habitat and water quality of the Chesapeake Bay watershed;

2. The *Legacy Plan* and successor or related plans to improve conditions in and around the Monumental Core and avoid adverse effects upon districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places;

3. Regional attainment of the National Ambient Air Quality Standard for ozone and other criteria air pollutants;

4. Noise reduction efforts in and around the Mall area and nearby locations along the Potomac and Anacostia Rivers that, because of their open space pastoral setting and recreational land use opportunities, are susceptible to noise effects;

5. The Environmental Protection Agency's Chesapeake Bay 2000 Program and other regional and local efforts continue to contribute to improved water quality in the Region, as well as effects on water quality including:

(a) Dissolved oxygen levels in the Upper Potomac Estuary

(b) The ability of urban streams to meet bacterial standards for safe water contact

(c) Sedimentation from excessive upstream erosion

(d) Increases in the amount of impervious surfaces and stormwater runoff

(e) Loss of wetlands or streamside forest buffers

6. Waste management practices promoting resource conservation and recovery as a means of reducing the impact of solid waste and avoiding the generation of hazardous waste material that poses significant risks of exposure to humans and to the environment;

7. Efforts to ensure that no group of people, including a racial, ethnic, or socioeconomic group, bears a disproportionate share of the negative environmental consequences of actions within the jurisdiction of the Commission;

8. Antenna Submission Requirements aimed at addressing the aesthetic impacts of antennas on the scenic and visual qualities of the National Capitol Region;

9. Smart Growth and Sustainability opportunities, including tree replacement initiatives to reverse the loss of trees in the National Capitol Region, and the conservation and management of Environmentally Sensitive Areas in the National Capital Region, including vegetation, floodplains, wetlands, aquifers and recharge areas, soils, native species and wildlife habitats.

Another federal lead agency may determine that an EIS is normally required on an action that they are proposing to submit for consideration by the Commission. In such circumstances, the agency will coordinate with the Commission in the preparation of the EIS and the Commission shall be identified by the lead agency as an official cooperating agency.

(C) Non-federal applicants' preparation of an EIS will require the Commission to be the lead federal agency for NEPA, unless another federal agency agrees to act as lead agency. In the role as lead federal agency, the Commission will direct and circulate the EIS and develop a related ROD in accordance with the requirements of the CEQ Regulations. The Commission shall ensure that, in the draft and final EIS developed by the Commission, a disclosure statement is executed by any contractor (or subcontractor), under contract to prepare the EIS document in

accordance with 40 CFR 1506.5(c), and that the disclosure appears as an appendix to the EIS.

In the preparation of a non-federal applicant EIS directed by the Commission, the following steps will be taken:

1. Notice of Intent (NOI) and scoping. The Commission shall publish an NOI in the **Federal Register**, in accordance with 40 CFR 1501.7, containing the elements specified in 40 CFR 1508.22 as soon as practicable after a decision is made to prepare an EIS.

Through the NOI, the Commission will invite comments and suggestions on the scope of the EIS.

The Executive Director shall disseminate the NOI in accordance with 40 CFR 1506.6. Publication of the NOI in the **Federal Register** shall begin the public scoping process. The public scoping process for a Commission EIS will allow a minimum of 30 days for the receipt of public comments. The Commission will hold at least one public scoping meeting after publication of the NOI as part of the public scoping process for a Commission EIS. The Executive Director will publish public notification of the location, date, and time of public scoping meeting(s) in the NOI or by other appropriate means, such as news releases to the local media, or letters to affected parties. Public scoping meetings will not be held until at least 30 days after public notification.

2. In determining the scope of the EIS, the Executive Director shall consider all comments received during the announced comment period held as part of the public scoping process. The Executive Director may also consider comments received after the close of the announced comment period. A public scoping process is optional for a Commission supplemental EIS (40 CFR 1502.9(c)(4)). If the Executive Director initiates a public scoping process for a supplemental EIS, the provisions of this section shall apply.

(D) Public review of an EIS.

1. The public review and comment period on a commission draft EIS will be no less than 45 days (40 CFR 1506.10(c)). The public comment period begins when EPA publishes a Notice of Availability of the document in the **Federal Register**.

2. The Executive Director will hold at least one public meeting during the public comment period on the draft EIS. Such a public meeting will be announced at least 30 days in advance of its scheduled occurrence. The announcement shall identify the subject of the draft EIS and include the location, date, and time of the public meeting.

(E) The Executive Director will prepare a final EIS following the public comment period and the public meeting on the draft EIS. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided at 40 CFR 1503.4.

(F) The Commission will make a decision about a proposal covered by an EIS after a 30-day ''review period'' following completion of the final EIS. The 30-day period starts when the EPA Notice of Availability for the final EIS is published in the **Federal Register**. If the The Executive Director decides to recommend an action on a proposal covered by an EIS, information to be contained in a Record of Decision (ROD), including monitoring and enforcement provisions as described at 40 CFR 1505.2, will be incorporated into the The Executive Director's Recommendation report. The Executive Director's Recommendation report will be available to the public prior to the Commission meeting where the proposal will be specifically acted upon. The Commission will arrive at its decision about the proposal and its environmental effects, as well as other considerations as specified in 40 CFR 1505.2, in a public meeting of record as identified by the Commission monthly agenda. The Commission may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD shall be subject to a public review and subject to the provisions of this paragraph.

(G) A supplemental Environmental Impact Statement will be prepared by the The Executive Director if there are substantial changes to the EIS proposal or significant new circumstances or information relevant to environmental concerns, as discussed in 40 CFR 1502.9(c)(1).

1. The Executive Director may supplement a draft EIS or final EIS at any time, to further the purposes of NEPA, in accordance with 40 CFR 1502.9(c)(2).

2. The Executive Director will prepare, circulate, and file a supplement to a draft or final EIS in the same manner as any original draft and final EIS, except that scoping is optional for a supplement. If the The Executive Director decides to recommend an action on a proposal covered by a supplemental EIS, information to be contained in a ROD, including monitoring and enforcement provisions as described at 40 CFR 1505.2, will be incorporated into the The Executive Director's Recommendation report. The Executive Director's Recommendation report will be available to the public prior to the Commission meeting where the proposal will be specifically acted upon. The Commission will arrive at its decision about the proposal and its environmental effects, as well as other considerations as specified in 40 CFR 1505.2, in a public meeting of record as identified by the Commission monthly agenda.

(H) The Executive Director, as provided in 40 CFR 1506.3, may adopt an existing EIS in accordance with CEQ Regulations.

(I) Section 106 consultation should be conducted during preparation of any EIS. Scoping, identification (see Section 5), and assessment of effects should be done during the analysis leading to the draft EIS, and the results should be presented in the draft EIS. Consultation to resolve adverse effects should be coordinated prior to and during public comment on the draft EIS, with the results reported in the final EIS. Any Memorandum of Agreement (MOA) developed under Section 106, or the final comments of the Advisory Council, should be addressed in the ROD. Unless there is some compelling reason to do otherwise, the Section 106 MOA should be fully executed before the ROD is issued, and the ROD should provide for implementation of the MOA's terms. 36 CFR, Subpart B, Section 800.8(c) of the Advisory Council's implementing regulations offers further guidance.

Section 10: Environmental Assessments

If a proposal or action is one that normally does not qualify for Categorical Exclusion, and the Executive Director does not find that consideration of the proposal should be documented in an EIS, the Executive Director will require preparation of an Environmental Assessment (EA). CEQ regulations identify the process of preparing Environmental Assessments, and that EA's are documents prepared to determine if an EIS is necessary. EAs should concisely describe the need for the proposal, the proposed action, and alternatives that meet the need for the proposal and the requirements of NEPA Section 102(2)(E), their environmental consequences, and a list of agencies and persons consulted (See Appendix A). If an EA determines that the proposed action will not have a significant effect on the human environment, the Executive Director will not prepare an EIS but must prepare a Finding of No Significant Impact (FONSI) (40 CFR 1508.13, ''Finding of No Significant Impact'') if the Commission utilizes the EA in its decision as a final approval action in concert with its authority under the Planning Act.

(A) Criteria used to determine those categories of action that normally

require an Environmental Assessment, but not necessarily an Environmental Impact Statement, include:

1. Detectable but likely insignificant degradation of environmental quality
2. Detectable but likely insignificant cumulative impact on environmental quality
3. Detectable but likely insignificant impact on protected resources

(B) Preparation of an EA for Commission review or adoption, if required, should generally adhere, for content, to the outline identified in Appendix A. Written in plain language, the EA should be analytic rather than encyclopedic and it should use an interdisciplinary analysis. The EA must encompass the range of alternatives to be considered by the Commission and it should be publicly scoped to assess alternatives and environmental impacts and involve interested persons and agencies in the development of the EA.

(C) If either a federal of the non-federal applicant applicant uses an existing EA in a submission requiring Commission approval, the Commission will adopt and take responsibility for the scope and contents of the environmental document if it is sufficient as defined by CEQ regulations. See 40 CFR, 1506.3 and 1506.5. The Commission will review another federal agency's EA, as provided for in Section 12 of these procedures, and may adopt the document if it meets the standards for an adequate document.

(D) Public review of an EA. The public review and comment period on a Commission-prepared EA will be no less than 30 days. The public comment period begins when the Commission publishes a Notice of Availability of the document in its tentative monthly Agenda or by separate mailing. Anyone may request a copy of the EA by contacting the Commission or the Commission Web site.

(E) The Commission will prepare a FONSI only if the related EA supports the finding that the proposed action will not have a significant effect on the human environment. If a required EA does not support a FONSI, the Commission will seek to have an EIS prepared, or the proposal will not be further considered for review and approval. In addition to the requirements found at 40 CFR 1508.13, a FONSI will include the following:

1. Any commitments to mitigation that are essential to render the impacts of the proposed action not significant, beyond those mitigations that are integral elements of the proposed action.
2. The date of issuance.
3. The signature of the Executive Director.

(F) A FONSI will be available for public review before the Commission takes an action on staff recommendation for the proposed action.

(G) Based on a review of the typical classes of actions it undertakes, the Commission has established that the following actions will normally require an Environmental Assessment but not necessarily an EIS prior to Commission action on the submitted proposal:

1. Approve a site proposal or preliminary design and recommendation to federal agencies, District of Columbia agencies, and non-federal applicants on actions or plans for a newly acquired site involving a project submitted to the Commission pursuant to 40 U.S.C. 8722(b)(1).
2. Approve preliminary plans for federal public buildings on existing federal land in the District of Columbia, and the provisions for open space in and around the same, pursuant to 40 U.S.C. 8722(d); DC Code 2–1004(c), except where such approval would apply to actions as specified at Section 8(C), item 21 of these procedures.
3. Approve the conceptual design of any commemorative work authorized under the Commemorative Works Act of 1986, 40 U.S.C. 8905(a). In the analysis for a commemorative work conceptual design the submitting agency shall ensure that the NEPA and Section 106 requirements, as provided at Section 4 (A)(3) of these procedures, are completed in advance of submission.
4. Approve a final report and recommendation to a federal or District of Columbia agency on any master plan or master plan modification submitted to the Commission. 40 U.S.C. 8722(c); DC Code 2–1004(d).
5. Approve the location, height, bulk, number of stories, size, and the provision for open space in and around District of Columbia public buildings in the central area of the District as concurrently defined by the Commission and Council. 40 U.S.C. 8722(e); DC Code 2–1004(c) [1]
6. Approve acquisition of lands in the District of Columbia and adjacent areas in Maryland and Virginia for the National Capital park, parkway, and playground systems and, in connection with acquisitions in Maryland and Virginia, make agreements with state officials as to the arrangements for such acquisitions. 40 U.S.C.; DC Code 2–1009.
7. Approve a comprehensive or general plan of the District of Columbia pursuant to Section 6(a) of the Redevelopment Act.
8. Approve plans showing the location, height, bulk, number of stories, size, and provisions for open space and off-street parking in and around buildings for foreign governments and international organizations on land sold or leased by the Secretary of State in the northwest section of the District of Columbia bounded by Connecticut Avenue, Tilden Street, Reno Road, 36th Street, Yuma Street, and Van Ness Street, pursuant to Section 4 of the Act of October 8, 1968 (Pub. L. 90–553) as amended by Public Law 97–186.
9. Approve transfers of jurisdiction over properties within the District of Columbia owned by the United States or the District among or between federal and District authorities, pursuant to 40 U.S.C. 8124(a), except where such transfers or jurisdiction conform to master plans or site and building plans approved by the Commission, or to urban renewal plans and modifications thereof, adopted by the Commission, or conform to the conditions specified at Section 8(C), item 22 of these procedures.

(H) Section 106 consultation should be conducted during preparation of any EA. Scoping, identification (see Section 5), and assessment of effects should be done during the analysis leading to preparation of the EA, and the results should be presented in the EA. Consultation to resolve adverse effects should be coordinated with public comment and evidence of that effort must occur and be reported in the EA. Any Memorandum of Agreement (MOA) required under Section 106, or the final comments of the Advisory Council, should be addressed in the Finding of No Significant Impact (FONSI). 36 CFR, Subpart B, Section 800.8(a) of the Advisory Council's implementing regulations offers further guidance.

Section 11. Public Participation

Public participation is required as a part of the EIS scoping and in the draft EIS review. The Commission must involve environmental agencies, applicants, and the public, to the extent practicable, in the preparation of EAs, and in determining whether extraordinary circumstances exist that may involve application of a Categorical Exclusion. The level and kind of public participation depend on the nature of the proposed action and the likely environmental issues.

Public involvement is appropriate:

1. During scoping.

[1] The central area has been concurrently defined by the *Commission* and *Council* to include the Shaw School and Downtown Urban Renewal Areas.

2. During the actual analysis of alternatives, the affected environment, and potential impacts.

3. During the review of the results of analyses as recorded in EAs and EISs. Commission recommended actions for involving the concerned public include:

1. Identify the potential ''stakeholders'' (that is, those with an economic, cultural, social, or environmental ''stake'') in the action through background research, consultation with knowledgeable parties, and public meetings.

2. Consult with stakeholders to establish and address their concerns.

3. Use facilitators where appropriate and necessary.

Where there may be language or cultural barriers to effective communication about scoping actions or decisions, public participation measures must be sensitive to such barriers and make appropriate efforts to overcome them. Translations into the community's usual language, and meetings held in ways that accommodate their cultural traditions, values, and modes of communication may be necessary.

Public meetings for purposes of scoping MUST:

1. Ensure that meeting facilities are accessible to the disabled.

2. Provide signers or interpreters for the hearing impaired, if requested.

3. Make special arrangements as needed for consultation with affected Indian tribes or other Native American groups who have environmental concerns that cannot be shared in a public forum.

To the fullest extent possible, the Commission shall use the public participation processes designed for carrying out NEPA requirements concurrent with and integrated with the environmental impact analyses and related surveys and studies required to comply with the NHPA, Section 106; the Comprehensive Environmental Response, Compensation, and Liability Act; the Native American Graves Protection and Repatriation Act (NAGPRA); Superfund Amendments & Reauthorization Act (SARA) Title III (Emergency Planning and Community Right-to-Know Act, or EPCRA); the Fish and Wildlife Coordination Act, the Endangered Species Act, and applicable Executive Orders.

With regard to the Section 106 process, the submitting applicant must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input prior to submittal of the potential undertaking to the Commission. Members of the public may also provide views on their own initiative for the Executive Director, the Commission, and submitting applicant to consider in decision making.

Section 12. Delegations to the Executive Director

In conjunction with carrying out these procedures, the Commission delegates to the Executive Director the functions of:

(A) Determining whether to prepare an EIS, make a Finding of No Significant Impact, or issue a Categorical Exclusion determination.

(B) Scoping and obtaining the information required for the preparation of a draft EIS or an environmental assessment.

(C) Preparing a draft EIS.

(D) Circulating a draft EIS for review and comment to EPA, affected and interested public agencies, and the general public.

(E) Integrating agency and public comments, where appropriate, into the preparation of the final EIS.

(F) Distributing the final EIS to EPA and all agencies and individuals who commented on the draft EIS.

(G) Determining the appropriate environmental documentation for each stage of Commission review, including adoption of federal agency prepared NEPA documents when appropriate.

(H) Monitoring and ensuring that mitigation and other conditions established by the Commission are implemented, including informing the public and cooperating or commenting agencies on progress regarding mitigation measures that the Commission proposed and were adopted.

(I) Preparing, circulating, and filing supplements to either draft or final environmental impact statements, if the Executive Director or the Commission finds that there are substantial changes to a proposed action that are relevant to environmental concerns, significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact, or that the purpose of NEPA will be furthered by doing so.

These delegates are not to be construed, however, to extend to the requirement to respond to any comments of the Advisory Council on Historic Preservation. That responsibility solely resides with the Chairman of the Commission.

Section 13. Public Information

Interested persons can obtain information on all elements of the Commission's NEPA and Section 106 processes from the Commission at 401 Ninth Street, NW., North Lobby, Suite 500, Washington, DC 20576. The public is also invited to visit the National Capital Planning Commission's Web site at *www.ncpc.gov*. The Office of Urban Design and Plans Review, at (202) 482–7200, can provide specific information on any aspect of a Commission NEPA document. The Commission will, to the maximum extent practicable, use the Commission's website and other effective means of communication to provide the public with current and relevant information regarding the quality of the human environment in the National Capital Region and the past, present and reasonably foreseeable future effects of Commission actions and proposals.

Section 14. Supersession

The Commission's environmental policies and procedures published at 36 FR 23706, 37 FR 3010, 37 FR 4936, 37 FR 11198, 37 FR 16039, and 47 FR 51481 are superseded.

Section 15. Authority

These procedures are adopted pursuant to the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.,* the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (43 FR 55978–56007), and the implementing regulations of Section 106 of the National Historic Preservation Act, 36 CFR, Part 800—Protection of Historic Properties.

Dated: June 30, 2004.

Wayne E. Costa,

Acting General Counsel & Designated Federal Register Officer.

[FR Doc. 04–15442 Filed 7–7–04; 8:45 am]

BILLING CODE 7520–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

In the Matter of Rochester Gas and Electric Corporation (R.E. Ginna Nuclear Power Plant), Order Approving Transfer of License and Conforming Amendment

Note: This Order was published on May 28, 2004, and has been subsequently modified by Order Modifying May 28, 2004, Order Approving Transfer of License and Conforming Amendment (June 14, 2004, 69 FR 33075).

Rochester Gas and Electric Corporation (RG&E) is the holder of

Renewed Facility Operating License No. DPR–18, which authorizes the operation of R. E. Ginna Nuclear Power Plant (Ginna) at steady-state power levels not in excess of 1520 megawatts thermal. The facility is located on the south shore of Lake Ontario, in Wayne County, New York. The license authorizes Ginna to possess, use, and operate the facility.

By letter dated December 16, 2003, RG&E and Constellation Generation Group, LLC (CGG), acting on behalf of Constellation's newly formed indirect subsidiary, R. E. Ginna Nuclear Power Plant, LLC, (Ginna LLC), jointly submitted an application to the Nuclear Regulatory Commission (NRC) requesting approval of the transfer of Facility Operating License No. DPR–18 for Ginna from RG&E to Ginna LLC. The licensee, RG&E, and Ginna LLC also jointly requested approval of a conforming amendment to reflect the transfer. The application was supplemented by submittals dated March 26 and April 30, 2004, from RG&E and February 27, and April 30, 2004, from CGG. The application and supplements are collectively referred to herein as the application, unless otherwise noted.

Ginna LLC, a Maryland limited liability company, is an indirect wholly owned subsidiary of CGG. According to the application, Ginna LLC would assume title to the facility following approval of the proposed license transfer. The conforming license amendment would remove references to RG&E from the license and add references to Ginna LLC, as appropriate, and make other administrative changes to reflect the proposed transfer.

RG&E and CGG requested approval of the transfer of the license and a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of the requests for approval and an opportunity to request a hearing or submit written comments was published in the **Federal Register** on January 22, 2004 (69 FR 3183). The Commission received no requests for a hearing and no written comments.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Ginna LLC is qualified to be the holder of the license to the extent proposed in the application, and that the transfer of the license to Ginna LLC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's Safety Evaluation dated May 28, 2004.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of the license as described herein to Ginna LLC is approved, subject to the following conditions:

(1) Before the completion of the sale and transfer of Ginna, Ginna LLC shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Ginna LLC has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) On the closing date of the transfer of Ginna, Ginna LLC shall obtain from RG&E a minimum of $201.6 million for decommissioning funding assurance for the facility, and ensure the deposit of such funds into a decommissioning trust for Ginna established by Ginna LLC.

(3) Decommissioning Trust.

(i) The decommissioning trust agreement must be in a form acceptable to the NRC.

(ii) Ginna LLC shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application and the requirements of this Order, and consistent with the Safety Evaluation supporting this Order.

(4) After receipt of all required regulatory approvals of the transfer of Ginna, Ginna LLC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date of the sale and transfer of Ginna no later than 7 business days prior to the date of closing. If the transfer of the license is not completed by June 1, 2005, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may, in writing, be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 16, 2003, and supplemental letters from RG&E dated March 26, and April 30, 2004, and from CGG dated February 27, and April 30, 2004, and the Safety Evaluation dated May 28, 2004, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, File Public Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov)*.

Dated in Rockville, Maryland, this 28th day of May 2004.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 04–15482 Filed 7–7–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3; Notice of Availability of the Final Supplement 17 to Generic Environmental Impact Statement for the License Renewal of Dresden Nuclear Power Station, Units 2 and 3

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–19 and DPR–25 for an additional 20 years of operation at Dresden Nuclear Power Station (DNPS). DNPS is located in Goose Lake Township, Grundy County, Illinois, adjacent to the Illinois River at the confluence of the Des Plaines and Kankakee Rivers. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

Section 9.3 of the final supplement 17 states:

> Based on (1) the analysis and findings in the GEIS (NRC 1996; 1999); (2) the ER [Environmental Report] submitted by Exelon (Exelon 2003b); (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of the public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Dresden Units 2 and 3 are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable.

The final Supplement 17 to the GEIS is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the Morris Area Public Library, located at 604 West Liberty Street, Morris, Illinois; and the Coal City Public Library District, located at 85 North Garfield Street, Coal City, Illinois, have agreed to make the final plant-specific supplement to the GEIS available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Wilson, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson may be contacted at 301–415–1108 or *jhw1@nrc.gov.*

Dated in Rockville, Maryland, this 29th day of June, 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–15481 Filed 7–7–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 5, 12, 19, 26, August 2, 9, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 5, 2004

Wednesday, July 7, 2004
1:55 p.m.—Affirmation Session (Public meeting) (If needed)

Week of July 12, 2004—Tentative

Tuesday, July 13, 2004
2:15 p.m.—Discussion of Security Issues (Closed—Ex. 1)
Wednesday, July 14, 2004
1:15 p.m.—Affirmation Session (Public Meeting) (If needed)

Week of July 19, 2004—Tentative

Wednesday, July 21, 2004
9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)
This meeting will be webcast live at the Web address: *http://www.nrc.gov*

Week of July 26, 2004—Tentative

There are no meetings scheduled for the Week of July 26, 2004.

Week of August 2, 2004—Tentative

There are no meetings scheduled for the Week of August 2, 2004.

Week of August 9, 2004—Tentative

There are no meetings scheduled for the Week of August 9, 2004.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 3–0 on June 30, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held June 30, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 1, 2004.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 04–15591 Filed 7–6–04; 9:51 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. MC2004–3; Order No. 1411]

Negotiated Service Agreement

AGENCY: Postal Rate Commission.

ACTION: Notice and order concerning late-filed Bank One testimony.

SUMMARY: This document informs the public that Bank One has filed a motion for late acceptance of additional testimony in support of a negotiated service agreement with the Postal Service. The document also notes the absence of any previous indication that this testimony might be filed, and states that its acceptance may raise due process concerns given the expedited nature of the case. It explains that participants will be given an opportunity to raise verbal objections to the testimony at the prehearing conference.

DATES: Objections to the Bank One Corporation motion for late acceptance of testimony are due July 15, 2004 (during the prehearing conference).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, at (202) 789–6818.

SUPPLEMENTARY INFORMATION:

Procedural History

Negotiated Service Agreement Proposed Rule, 68 FR 52546 (September 4, 2003).

Negotiated Service Agreement Final Rule, 69 FR 7574 (September 4, 2003).

Rate and Service Changes to Implement Functionally Equivalent Negotiated Service Agreement, 69 FR 39520 (June 25, 2004).

On June 28, 2004, Bank One Corporation filed motion of Bank One Corporation for late acceptance of the testimony of Lawrence G. Buc (Motion).[1] Bank One notes that the Postal Service's request and Bank One witness Rappaport's testimony were filed on June 21, 2004. Bank One asserts that production and coordination difficulties prevented witness Buc's testimony from being filed at that time. It requests late acceptance of witness Buc's testimony, and contends that it believes no party will be prejudiced by this delay.

The procedural rules for reviewing Postal Service requests predicated on functionally equivalent negotiated service agreements were promulgated with the intent of facilitating expedited review. Decisions can be issued in as little as 60 days. Assuming an expedited schedule, the filing of new testimony 7 days after the filing of the Postal Service's request, without any prior notice in the request of the potential for additional testimony, could be prejudicial and affect the procedural and due process rights of current and potential intervenors.[2]

The Secretary shall arrange for publication of this notice and order in there **Federal Register** to advise current and potential participants of the submission of additional testimony on behalf of Bank One. Any objection to the motion to accept this testimony shall be presented at the July 15, 2004 prehearing conference

Ordering Paragraphs

It is ordered:

1. Any objection to the Motion of Bank One Corporation for Late Acceptance of the Testimony of Lawrence G. Buc shall be presented at the July 15, 2004 prehearing conference.

2. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

Issued: July 2, 2004.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. 04–15524 Filed 7–7–04; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 69 FR 40690, July 6, 2004.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting.

A Closed Meeting will be held on Thursday, July 15, 2004, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, July 15, 2004, will be: Formal orders of investigation; Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings of an enforcement nature; Regulatory matter involving a financial institution; and Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: July 6, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15622 Filed 7–6–04; 1:45 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49958; File No. SR–OPRA–2004–02]

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information and Amendment No. 1 Thereto To Eliminate From the Plan References to the Fee Exemption Pilot Currently Provided for in the Plan

July 1, 2004.

Pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on May 7, 2004, the Options Price Reporting Authority (''OPRA'')[3] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). On June 23, 2004, OPRA submitted Amendment No. 1 to

[1] Contemporaneous with this Motion, Bank One filed direct testimony of Lawrence G. Buc on behalf of Bank One Corporation, June 28, 2004, and the Postal Service filed United States Postal Service notice of review of the direct testimony of Lawrence G. Buc on behalf of Bank One Corporation, June 28, 2004.

[2] Rule 192(a) [39 CFR 3001.192a] requires all prepared direct evidence to be filed simultaneously with the filing of the Postal Service's formal request.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc. (''ISE''), the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

the proposal.[4] The proposed amendment would eliminate from the OPRA Plan references to the fee exemption pilot that expired on May 31, 2004. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment, as amended by Amendment No. 1.

I. Description and Purpose of the Amendment

The purpose of the proposed OPRA Plan amendment is to eliminate from the OPRA Plan references to the fee exemption pilot currently provided for in the OPRA Plan. The fee exemption pilot was added to section VII(d)(vi) of the OPRA Plan in August 2000. It provides a temporary exemption from OPRA fees for members of exchanges that are parties to the OPRA Plan and that act as brokers or dealers on traditional exchange trading floors or as specialists or market makers on electronic exchanges or electronic facilities of exchanges. For the duration of the pilot, section V(e) of the OPRA Plan also provides that parties to the OPRA Plan may access OPRA information on their trading floors or at their other business locations without being obligated to pay fees to OPRA. The temporary exemption for members of parties and for the parties themselves was originally scheduled to expire on May 31, 2002, but was extended by OPRA until May 31, 2004.[5]

OPRA states that the temporary fee exemption was added to the OPRA Plan shortly before the commencement of trading on the all-electronic ISE in order to eliminate what could otherwise have been viewed as discrimination between devices on the trading floors of traditional exchanges, which had never been subject to information fees, and devices used by market makers on electronic exchanges, which, absent the exemption, would have been subject to OPRA fees. OPRA states that, at the time the temporary fee exemption was adopted, it recognized that an alternative way to avoid discriminating among different types of exchanges would be to subject all devices used to access OPRA information, whether on-floor or off-floor, to OPRA's information fees. OPRA believes that this would be the effect of the proposed amendment, which, upon its effectiveness, would make all devices that are used to access options market information furnished by OPRA subject to OPRA's information fees.

OPRA also proposes to amend the OPRA Plan to confirm that the receipt of options market data by an exchange over devices maintained by such exchange at its business locations would not involve redistribution of the data by such exchange, notwithstanding that members of such exchange could be able to access the information over those devices. OPRA proposes to amend the definitions of ''vendor'' and ''subscriber'' set forth in paragraphs (k) and (l) of section II of the OPRA Plan to acknowledge that an exchange making options market information available to its members over devices maintained by an exchange at the exchange's business locations would not be engaged in ''redistributing'' the information. Accordingly, neither the exchange nor its members who access options market data in this way would need to enter into vendor or subscriber agreements with OPRA. However, upon the expiration of the fee exemption pilot, all devices maintained by exchanges for the receipt of OPRA information would be subject to OPRA's information fees.

Finally, as a matter of ''housekeeping,'' OPRA proposes to delete from section V(c)(i) of the OPRA Plan language concerning the introduction of OPRA's BBO Service in 2003 since the BBO Service is now already in place.

The text of the proposed OPRA Plan amendment, as amended, is set forth below. Proposed new language is in *italics*; deletions are in brackets.

* * * * *

II. Definitions

* * * * *

(k) ''Vendor'' means a person that receives consolidated Options Information provided by OPRA or provided by a Vendor in connection with such person's business of distributing, publishing, or otherwise furnishing such information to other persons; *provided, however, that a party to the Plan who receives consolidated Options Information over interrogation, display or other communications devices maintained by or on behalf of the party at any of its business locations shall not be deemed to be a Vendor solely because members of the party have access to consolidated Options Information over such devices at such locations. If a party makes consolidated Options Information available to its members or to any other persons (other than the party's own employees or agents) over any other devices or at any other locations, the party shall be deemed to be a Vendor.*

(l) ''Subscriber'' means a person that receives consolidated Options Information provided by OPRA or provided by a Vendor for [its] *such person's* own use, other than in connection with [its] *such person's* activities as a Vendor, *provided, however, that a member of a party to the Plan shall not be deemed to be a Subscriber solely because the member has access to consolidated Options Information over interrogation, display or other communications devices maintained by or on behalf of such party at one or more of such party's business locations.*

III. Administration of the Plan

(a) [No Change]

(b) *Authority of Policy Committee.* Except as otherwise expressly provided in the Plan, the OPRA Policy Committee shall make all policy decisions on behalf of OPRA in furtherance of the functions and objectives of OPRA under the Exchange Act and under the Plan, including but not limited to the following:

(1)–(3) [No change]

(4) Determining the level of fees to be paid to [the parties by] *OPRA by parties,* Vendors, Subscribers[,] or [others for] *other approved persons for access or other* services related to consolidated options Last Sale Reports or consolidated Quotation Information;

(5)–(7) [No change]

(c)–(h) [No change]

* * * * *

V. Collection and Dissemination of Options Last Sale Reports and Quotation Information

(a)–(b) [No change]

(c) *Dissemination of Last Sale Reports, Quotation Information and Other Information.*

(i) The OPRA System shall provide for the uniform, nondiscriminatory dissemination of consolidated Options Information, on fair and reasonable terms over a network or networks to *the parties*, Vendors, Subscribers and other approved persons. Such information shall include consolidated Last Sale Reports and consolidated Quotation Information for all series of options for which the parties are required to provide current market information to OPRA in accordance with paragraphs (a)–(b) of this section V, *and* [Not later than March 31, 2003, or upon the earlier completion of modifications to the OPRA system necessary to enable the

[4] See letter from Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated June 22, 2004, replacing in its entirety the initial proposal filed on May 7, 2004. Amendment No. 1 made technical corrections to the proposed rule text and purpose section.

[5] *See* Securities Exchange Act Release Nos. 43109 (August 2, 2000), 65 FR 48769 (August 9, 2000) (SR–OPRA–00–06), and 46032 (June 5, 2002), 67 FR 40356 (June 12, 2002) (SR–OPRA–2002–02).

System to carry the BBO, such information] shall also include the BBO for all such series of options. [Once the BBO is available through the OPRA System,] OPRA may offer a complete options market data service consisting of the BBO combined with consolidated Last Sale Reports and Quotation Information, or OPRA may offer a limited service consisting of the BBO combined with consolidated Last Sale Reports only while separately continuing to offer Last Sale Reports and complete Quotation Information. Only such consolidated market information and related information, together with other information that satisfies the conditions of paragraph (iv) of this section V(c) or is approved by OPRA, shall be disseminated through the System.

(ii)–(iv) [No change]

(d) [No change]

[(e) For the duration of the pilot period described in subparagraph (d)(vi) of section VII of the Plan, each of the parties to the Plan is entitled to access Options Information without obligation to pay information fees or facilities charges to OPRA, provided that such access is provided only on the party's trading floor or at its other business locations, and provided further that the Options Information is used by the party only in connection with the operation, surveillance or regulation of its market in Eligible Securities. This entitlement extends to any other self-regulatory organization that performs regulatory or surveillance functions for a party.]

* * * * *

VII. Vendors, Subscribers and Other Approved Persons

(a) *Approval Required.* Consolidated Options Information shall be disseminated through the OPRA System only to *the parties*, Vendors, Subscribers and other categories of persons that have been approved by OPRA and have entered into agreements with or for the benefit of OPRA and are in full compliance therewith. OPRA may, in its discretion, require that Vendors, Subscribers or other approved persons be separately approved to receive consolidated Last Sale Reports and/or consolidated Quotation Information relating to each of FCO Securities, Index Option Securities or other categories of Eligible Securities. Any Vendor, Subscriber, or other approved person may be disapproved or its previous approval may be terminated upon a determination by OPRA that such action is necessary or appropriate in the public interest or for the protection of investors, or in the event such person violates any provision of any contract or agreement pursuant to which such person receives consolidated Last Sale Reports, consolidated Quotation Information or other Options Information. Any person adversely affected by final action of OPRA in disapproving or revoking prior approval of the privilege of receiving consolidated Last Sale Reports or consolidated Quotation Information shall be entitled to have such action reviewed in accordance with the applicable rules and regulations of the Securities and Exchange Commission.

(b)–(c) [No change]

(d) *Fees and Charges.*

(i) *General.* OPRA may impose information fees and/or facilities charges upon *all persons who have access to Options Information, including parties,* Vendors, Subscribers or other approved [persons in accordance with the agreements between OPRA and such] persons. A schedule of OPRA's effective fees and charges is attached as Exhibit A hereto. Except as provided in paragraphs (ii) and (iii) below, changes in these fees and charges may be made by the affirmative vote of not less than two-thirds of all of the parties. Upon approval in accordance with this section VII(d) and, in the case of fees and charges subject to approval only by parties who provide a market in FCO Securities or Index Option Securities, upon not less than 30 days prior written notice to the other parties, changes in fees and charges may be put into effect upon OPRA's filing notice thereof with the Securities and Exchange Commission, subject to any required notice period in the agreements between OPRA and the persons subject to the fees or charges in question. Any change in a fee or charge that has taken effect as stated above may be summarily abrogated by the Securities and Exchange Commission within 60 days of the date of filing the same with the Commission if the Commission determines that it is appropriate in furtherance of the purposes of the Exchange Act that such change not be put into effect until it has been reviewed and approved by the Commission. The abrogation of a change in a fee or charge by the Commission shall not affect the validity of the revised fee or charge during the period it was in effect, except that if the Commission should ultimately disapprove the change, OPRA shall refund the excess of any fees or charges paid to it over the fees or charges as finally approved by the Commission.

(ii)–(v) [No change]

[(vi) *Temporary Exemption From Subscriber Fees and Charges for Certain Members of Parties.* During a pilot period that end on May 31, 2002, or on such later date as OPRA may determine, except as OPRA's schedule of effective fees and charges may expressly provide to the contrary, a member of a party who acts in the capacity of a broker or dealer on a party's trading floor, or a member of a party who acts as a specialist or registered market maker on an electronic exchange or other electronic facility maintained by the party, shall not be subject to OPRA's information fees or facilities charges in respect of those terminals or other devices that are used by the member for the sole purpose of obtaining access to OPRA Information in connection with its performing the above activities. Such members who have access to OPRA Information at off-floor locations will be required to enter into Subscriber agreements with OPRA, except that the provisions of those agreements pertaining to payment of fees to OPRA will not apply.]

* * * * *

II. Implementation of Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3–2 of the Act.[6]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OPRA–2004–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OPRA–2004–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

[6] 17 CFR 240.11Aa3–2.

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OPRA–2004–02 and should be submitted on or before July 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15486 Filed 7–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49952; File No. SR–EMCC–2004–04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Buy-In and Sell-Out Procedures

June 30, 2004.

On April 2, 2004, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] (File No. SR–EMCC–2004–04). Notice of the proposal was published in the **Federal Register** on June 21, 2004.[2] No comment letters have been received to date. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The proposed rule change will (a) revise EMCC Rule 7, sections 18 (Buy-Ins) and 19 (Sell-Outs) to shorten the time period when a buy-in and sell-out may be initiated and when it may be executed and (b) make conforming, technical changes to EMCC Rule 1 (Definitions and Descriptions) and Rule 7.

In December 2003, EMCC learned that effective January 1, 2004, ISMA was changing its buy-in and sell-out time frames for non-EMCC transactions. ISMA's changes had the effect of shortening the time period when a buy-in or sell-out could be initiated and when it could be executed. If EMCC had not made a corresponding change to its buy-in and sell-out rules at that time, it was possible that many EMCC members would have stopped submitting transactions to EMCC because they potentially could face buy-in and sell-out exposure due to the differences in EMCC's and ISMA's time frames. Accordingly, in order not to jeopardize the usage of EMCC for trade processing or expose its members to risk, EMCC filed a proposed rule change with the Commission to conform its buy-in and sell-out time frames to those of ISMA.

On December 30, 2003, the Commission approved on a temporary basis through June 30, 2004, EMCC's proposed rule change.[3] Because the industry has not taken any action to date to rescind the changes ISMA made effective on January 1, 2004, EMCC is now seeking to have its buy-in and sell-out rules approved on a permanent basis.

In addition to these proposed rule changes, EMCC is also making technical corrections to Rule 1 and Rule 7 regarding several rule and section references regarding its buy-in and sell-out provisions that inadvertently were not made in the past.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F)[4] of the Act, which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Because this proposed rule change aligns EMCC's buy-in and sell-out procedures with those of ISMA, EMCC should avoid any abrupt stoppage of the use of its services by members concerned with potential exposure from having two different buy-in and sell-out time frames. As a result, EMCC will be able to continue to provide for the prompt and accurate clearance and settlement of transactions in emerging markets securities.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing because such approval will allow EMCC to have permanent buy-in and sell-out procedures that conform to the industry guidelines generally used in transactions cleared outside EMCC. This will help to avoid confusion and other adverse consequences to EMCC and its participants.

The Commission also believes that there is good cause for approving the proposed rule change before the end of the comment period because such approval will allow EMCC to have permanent buy-in and sell-out procedures that conform to the industry guidelines generally used in transactions cleared outside EMCC. This will help to avoid confusion and other adverse consequences to EMCC and its participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act[5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2004–04) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15454 Filed 7–7–04; 8:45 am]

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[7] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49851 (June 10, 2004), 69 FR 34410.

[3] Securities Exchange Act Release No. 49011 (Dec. 30, 2003), 69 FR 711 (Jan. 6, 2004) (File No. SR–EMCC–2003–07).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49947; File No. SR–FICC–2003–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Implementation of Fines

June 30, 2004.

I. Introduction

On January 3, 2003, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2003–01 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On January 8, 2003, June 8, 2003, and February 25, 2004, FICC filed amendments to the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 30, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change enables FICC to implement fines for the failure to timely submit required financial reports and to meet certain additional reporting requirements.[3] Pursuant to Rule 2, section 5 of FICC's Government Securities Division (''GSD'') Rules and Article III, Rule 2, section 10 of FICC's Mortgage Backed Securities Division (''MBSD'') Rules and in furtherance of FICC's obligation to minimize risk to all members, FICC requires that on a periodic basis its members submit financial reports detailing certain information about their financial status.[4] These reports are crucial to FICC surveillance procedures because they allow FICC credit risk personnel to review and monitor the financial condition of members. While the majority of FICC's members satisfy their reporting obligations in a timely manner, from time to time certain members are late in submitting their reports to FICC. Late submissions adversely affect FICC's financial surveillance processes and ultimately create risk for FICC and its members. To remedy this situation, FICC is implementing of a fine schedule to promote improved compliance with reporting timeframes.

Historically, GSCC and MBSCC, FICC's predecessors, have instituted fines and late fees to enforce various deadlines, rules, and procedures. Since February 2002, GSCC has been charging its members fees for failure to provide repo collateral substitution notifications in a timely manner. In July 2001, GSCC began imposing fees on those members that submit trade data on a non-interactive basis. In addition, since 1998 GSCC has had the authority to impose fines in order to promote greater compliance with its funds settlement debit and clearing fund deposit deficiency call deadlines. MBSCC likewise charges members additional fees for late submissions of settlement balance order market differential payments and cash adjustment payments.

As with other fines that are currently in place, members will be able to contest these new fines through the process set forth in Rule 37 of GSD's Rules and in Article V, Rule 7 of MBSD's Rules.

FICC is also amending both GSD's and MBSD's Rules to require members to submit to FICC concurrently with their submission to the applicable regulators copies of certain filings which members are required to file pursuant to the Sarbanes-Oxley Act of 2002 and any amendments thereunder. FICC will determine from time to time which of such filings it will require its members to submit. In addition, FICC is amending GSD's Rules to require members to submit to FICC concurrently with their submission to the applicable regulators all reports or other notifications required to be filed when their capital levels fall below required minimums.[5]

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[6] By requiring its members to submit additional financial reports triggered by falling capital levels and by implementing fines for failure to submit financial reports on a timely basis, the proposed rule change is designed to improve FICC's ability to monitor the financial condition of its members. Accordingly, the proposed rule should help FICC limit financial risk to itself and its members and therefore should help FICC to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2003–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15491 Filed 7–7–04; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49125 (January 26, 2004), 69 FR 4547. Although the proposed rule change was amended after it was noticed for comment in the **Federal Register**, republication of the notice is not necessary because the post-notice amendment made only a technical change to the proposed rule change.

[3] The Commission incorrectly stated in the notice that the proposed rule change would also eliminate a provision in FICC's rules allowing foreign members to prepare their financial statements in accordance with accounting standards other than U.S. Generally Accepted Accounting Principles (''GAAP''). The proposed rule change does not deal with accounting standards.

[4] These reports include monthly FOCUS and FOGS reports, quarterly CALL reports, annual audited financial statements, and other periodic financial data as outlined in FICC's rules.

[5] Both GSD and MBSD require broker-dealer participants to submit copies of supplemental reports filed pursuant to Rule 17a–11 under the Act to FICC concurrently with their submission to the Commission. Rule 17a–11 requires registered broker-dealers to notify the Commission of a decline in net capital below minimum Commission requirements. However, members (including broker-dealer members) may have other similar regulatory notification requirements (imposed by the Commission, another regulator, or similar authority) when their capital levels or other financial requirements fall below required levels. The Rules of MBSD were recently amended to include the requirement that members submit such notifications to FICC concurrently with their submission to the relevant regulatory authority. Securities Exchange Act Release No. 49156 (January 30, 2004), 69 FR 5881 (February 6, 2004) [File No. SR–MBSCC–2001–06]. This present rule filing imposes the same requirement in the Rules of GSD.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49943; File No. SR–ISE–2001–22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the International Securities Exchange, Inc., To Establish a Solicited Order Mechanism

June 30, 2004.

I. Introduction

On July 26, 2001, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish a mechanism for matching a member's unsolicited agency orders with orders the member solicits from other broker-dealers. On January 4, 2002, June 26, 2002, and January 6, 2004, ISE filed Amendment Nos. 1, 2, and 3 to the proposed rule change, respectively.[3] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on February 5, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Under ISE Rule 717(e), an Electronic Access Member (''EAM'') is required to expose an unsolicited agency order (the ''Agency Order'') for at least 30 seconds before crossing it against an order that it has solicited from other broker-dealers. Currently, an EAM can comply with this requirement only by entering the Agency Order on the Exchange, waiting 30 seconds, and then entering the solicited order.

The proposed rule change would provide an alternative, enabling EAMs to pair solicited orders against Agency Orders for execution through a Solicited Order Mechanism (''Mechanism'') designed for this purpose.[5] Such trades would be required to be for at least 500 contracts and would be executed only if the price is at or between the ISE best bid or offer (''BBO''). Both orders entered into the Mechanism would be required to be all-or-none limit orders.[6]

When a proposed solicited cross is entered into the Mechanism, the Exchange would send a message to Crowd Participants,[7] giving them ten seconds to enter responses with the prices and sizes at which they would be willing to participate in the execution of the Agency Order. If at the end of the ten seconds there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order would be executed at that price (or prices), [8] and the solicited order would be canceled.

The aggregate of all orders, quotes, and responses at each price would be used to determine whether the entire Agency Order could be executed in this manner. Public customer orders would be given priority in the execution, and then all other non-customer interest at the same price would participate pro-rata based on size.

If at the end of the ten seconds there is not sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order would be executed against the solicited order at the proposed price, provided that such price is equal to or better than the BBO on the Exchange,[9] and there are no public customer orders on the Exchange that are at the proposed price.

If there are one or more public customer orders on the book at the proposed execution price and there is sufficient size to execute the entire Agency Order, the Agency Order would be executed against that size and the solicited order would be canceled.[10] If there are one or more public customer orders on the book at the proposed execution price but there is not sufficient size to execute the entire Agency Order, both the Agency Order and the solicited order would be canceled.

The proposed rule also would stipulate that, prior to entering an Agency Order into the Mechanism, an EAM must deliver to the customer a written notification informing the customer that its order may be executed using the Mechanism. The document would be required to disclose the terms and conditions of the Mechanism in a form approved by the Exchange.

The proposed rule change would include Supplementary Material stating that the Mechanism provides a facility for members that locate liquidity for their customer orders, and that members may not use the Mechanism to circumvent Exchange rules limiting principal transactions.[11] This would include a member entering contra orders that are solicited from affiliated broker-dealers or broker-dealers with which the member has an arrangement that allows the member to realize similar economic benefits from the solicited transaction as it would achieve by executing the order in whole or in part as principal.

The proposed rule change also adds a reference to the Mechanism in its rules that prohibit anticipatory hedging activities prior to the entry of an order on the Exchange.[12]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[13] and in particular with the requirements of section 6(b)(5) of the Act.[14] The Commission believes that the proposal, which would create a mechanism to execute large-size customer orders against orders solicited from broker-dealers, includes appropriate terms and conditions to assure that the customer orders are first exposed to the ISE crowd participants for the possibility of price improvement and that public customer orders on the Exchange are protected.

The proposal would provide a mechanism for an EAM to trade an

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letters from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 3, 2002, June 25, 2002, and January 5, 2004.

[4] *See* Securities Exchange Act Release No. 49141 (January 28, 2004), 69 FR 5625.

[5] The rules relating to the Mechanism would be set forth in new paragraph (e) of ISE Rule 716.

[6] Although orders solicited from public customers are not subject to the exposure requirement of Rule 717(e), they would be permitted to be entered into the Mechanism should Exchange members choose this alternative.

[7] The term ''Crowd Participants'' is defined for purposes of ISE Rule 716 as the market makers appointed to an option options class under ISE Rule 803, as well as other members with proprietary orders at the inside bid or offer for a particular series.

[8] Such execution would be subject to the condition that the price is equal to or better than the ISE BBO.

[9] If an execution would take place at a price that is inferior to the BBO on the Exchange, both the solicited order and the Agency Order would be canceled.

[10] The aggregate size of all orders, quotes, and responses would be used to determine whether the Agency Order could be executed. Public customer orders would be given priority in the execution, and then all other non-customer interest at the same price would participate pro-rata based on size.

[11] *See* ISE Rule 717(d).

[12] *See* Supplementary Material to ISE Rule 400 (Just and Equitable Principles of Trade).

[13] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[14] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Agency Order of 500 contracts or more against a contra side order of the same size it has solicited from a broker-dealer,[15] but only when a better price for the full size of the Agency Order is not available in the aggregate of all quotes, orders, and responses from Crowd Participants. The Mechanism would require the Agency Order to be exposed to Crowd Participants for 10 seconds before the solicited order could trade against it. In no case would the customer receive a price inferior to the Exchange's BBO.

Under the proposal, if the execution price is not improved for the full size of the customer's order (*i.e.*, the Agency Order), the Agency Order would be executed in full against the solicited order at the originally proposed price (unless there are public customer orders on the book at that price or the Exchange BBO has improved over that price). The Commission believes that customers seeking to transact orders of the size eligible for entry into the Mechanism ''500 contracts or more '' can assess the implications of the Mechanism's terms of use. The Commission notes, moreover, that the proposed rule change would require EAMs to provide customers with the terms and conditions of the Mechanism in writing before entering orders into it on their behalf.

In addition, the Commission notes that the proposed rule change would not permit solicited orders to trade when there is a public customer order on the book at the proposed execution price. In such circumstances, if there is sufficient size in the aggregate to fill the Agency Order, first the public customer order, and then any other quotes, orders, and responses, are executed against the Agency Order, and the solicited order is canceled. If there is insufficient size, both the Agency Order and solicited order are canceled.

The Commission further notes that ISE has included a provision stating that an EAM may not use the Mechanism to circumvent the Exchange rules limiting principal transactions. For example, this provision would prohibit an EAM from entering contra side orders solicited from broker-dealers with which the EAM is affiliated or from broker-dealers with which the EAM has an arrangement that would allow it to realize economic benefits similar to internalization.

Finally, the Commission notes that ISE's rules prohibit anticipatory hedging based on knowledge of an imminent transaction before the terms and conditions of the transaction are disclosed to the trading crowd. These rules already apply to solicited order transactions. ISE proposes to amend those rules to establish that entry of the terms and conditions of a solicited order transaction are deemed ''disclosed'' when they are entered into the Mechanism. The Commission believes this proposed amendment is reasonable and conforms to a similar provision regarding transactions entered into the Exchange's Facilitation Mechanism.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–ISE–2001–22), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15455 Filed 7–7–04; 8:45 am]

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[15] The Commission notes that, under ISE Rule 717(g), an EAM generally is not permitted to represent an order for the account of an ISE market maker. Thus, an EAM would not be permitted to use the Mechanism to execute an Agency Order against an order solicited from an ISE market maker. Telephone conversation between Michael Simon, Senior Vice President and General Counsel, ISE, and Ira Brandriss, Assistant Director, Division, Commission, on June 29, 2004. The Commission notes that the ISE has filed another proposed rule change to amend Rule 717(g) to permit an EAM to enter an order on behalf of an ISE market maker under specified conditions. *See* File No. SR–ISE–2004–17. This Order, however, approves the proposed rule change only to the extent that the restriction of current ISE Rule 717(g) applies.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49957; File No. SR–ISE–2004–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Fee Changes

July 1, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2004, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The ISE submitted Amendment No. 1 to the proposed rule change on June 21, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees to adopt a $.10 per contract surcharge and temporary fee waivers for certain transactions in options based on the S&P MidCap 400 Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and noted that it did not solicit or receive comments on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to adopt a $.10 per contract surcharge and temporary fee waivers for certain transactions in options based on the S&P MidCap 400 Index.

The Exchange's Schedule of Fees currently has in place a surcharge fee item that calls for a $.10 per contract fee for transactions in certain licensed products. The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc., in connection with the listing and trading of index options on the S&P MidCap 400 Index. As with

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 18, 2004 (''Amendment No. 1''). Amendment No. 1 replaced and superceded the original filing in its entirety. In Amendment No. 1, the Exchange provided additional clarification regarding its proposed changes and made a correction to the proposed fee schedule.

licensed equity options, the Exchange is adopting a fee for trading in these options to defray the licensing costs. The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, the Exchange proposes to exclude Public Customer Orders [4] from this surcharge fee. Accordingly, this surcharge fee will only be charged with respect to non-Public Customer Orders (*i.e.*, Market Maker and Firm Proprietary orders).

Additionally, for competitive purposes and in an attempt to generate trading interest, the Exchange is proposing to temporarily waive all transaction fees for non-Public Customer Orders in S&P MidCap 400 Index options. Specifically, the Exchange is proposing to waive the following transaction fees for non-Public Customer Orders in S&P MidCap 400 Index options until November 25, 2004: (i) The market maker and firm proprietary execution fee; (ii) the surcharge fee; and (iii) the comparison fee.

The Exchange is also proposing to make certain non-substantive clarifications to its Schedule of Fees. Specifically, the Exchange proposes to clarify its Note under the Comparison Fee section of its Schedule of Fees.[5] The Exchange seeks to clarify that its comparison fees apply to both equity and index options. The Exchange further proposes to amend the text in the note to the Comparison Fee relating to the waiver of the fee for Public Customer Orders in order to achieve consistency of terms within the Schedule of Fees. Finally, the Exchange proposes to reinsert relevant text related to a fee waiver contained in the Notes under the Market Maker and Firm Proprietary section that was inadvertently deleted in a prior rule filing.[6]

[4] Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[5] The Commission notes that the Comparison Fee originally was published for notice and comment as part of the ISE's adoption of its Schedule of Fees, and that the fee initially was waived for customer trades for a period of six months. *See* Securities Exchange Act Release No. 42473 (Feb. 29, 2000), 65 FR 11818 (Mar. 6, 2000) (notice of SR–ISE–00–02) and 42730 (Apr. 28, 2000) 65 FR 26256 (May 5, 2000) (approval order of SR–ISE–00–02).

[6] *See* Securities Exchange Act Release No. 49853 (June 16, 2004) (notice of SR–ISE–2004–15).

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[7] in general, and section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change, as amended. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on June 21, 2004, the date the ISE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2004–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–22 and should be submitted on or before July 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15487 Filed 7–7–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49956; File No. SR–ISE–2004–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. Relating To Electronically Generated Orders

July 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2004, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On June 30, 2004, the ISE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Rule 717(f) to allow electronically generated market orders, immediate-or-cancel limit orders, and fill-or-kill limit orders. The text of the proposed rule change is as follows, with additions indicated in italics:

Rule 717. Limitations on Orders

* * * * *

(f) Electronic Orders.

Members may not enter, nor permit the entry of, orders created and communicated electronically without manual input (*i.e.*, order entry by Public Customers or associated persons of Members must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent), unless such orders are (*1*) non-marketable limit orders to buy (sell) that are priced higher (lower) than the best bid (offer) on the Exchange (*i.e.*, limit orders that improve the best price available on the Exchange), *(2) limit orders that are designated as fill-or-kill or immediate-or-cancel, or (3) market orders.* Nothing in this paragraph, however, prohibits Electronic Access Members from electronically communicating to the Exchange orders manually entered by customers into front-end communications systems (*e.g.*, Internet gateways, online networks, etc.).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, under ISE Rule 717(f), Electronic Access Members (''EAMs'') are not permitted to enter orders that are generated and communicated electronically without human intervention unless such orders are non-marketable limit orders that improve the Exchange's best bid or offer. The Exchange represents that one purpose of this rule is to limit the ability of non-market makers to effectively make markets on the Exchange using automated systems that place and cancel orders in a manner that is similar to quoting.[4]

As a general matter, the Exchange believes that maintaining the prohibition on electronically generated orders is important to prevent EAMs from acting like market makers without also being subject to the responsibilities of market makers. However, the Exchange believes that certain types of electronically-generated orders do not raise these concerns. Specifically, the Exchange proposes to allow the electronic generation of orders that are not eligible to rest on the limit order book, as the Exchange believes that these types of orders do not present the same ''market making'' potential as resting limit orders. Such orders include market orders, fill-or-kill limit orders, and immediate-or-cancel limit orders.[5] By allowing these types of orders, which are not eligible to rest on the limit order book, but maintaining the prohibition on other electronically generated limit orders, the Exchange believes the right balance will be achieved.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5) of the Act[7] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change will benefit investors by allowing them to electronically generate additional types of orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 29, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified certain language in the purpose section. The substance of Amendment No. 1 has been incorporated into this notice.

[4] The ISE represents that, while most of the options exchanges currently maintain a similar prohibition on electronically generated orders (*see, e.g.*, American Stock Exchange Rule 934, Chicago Board Options Exchange Rule 6.8A, and Pacific Exchange Rule 6.88), the Philadelphia Stock Exchange has removed its limitations on electronically generated orders. *See* Securities Exchange Act Release No. 48648 (October 16, 2003) 68 FR 60762 (October 23, 2003) (approving SR-Phlx–2003–37).

[5] These order types are defined in ISE Rule 715.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

(ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2004–19 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–19 and should be submitted on or before July 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15488 Filed 7–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49950; File No. SR–NASD–2003–163]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto, by the National Association of Securities Dealers, Inc., Relating to Voluntary Direct Communication Between Parties and Arbitrators

June 30, 2004.

I. Introduction

On October 31, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder.[2] On February 23, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change was published for comment in the **Federal Register** on May 19, 2004.[4] The Commission received two comments regarding the proposal.[5] On June 29, 2004, NASD filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, grants accelerated approval of Amendment No. 2, and solicits comment from interested persons on Amendment No. 2.

II. Description of the Proposed Rule Change

NASD Dispute Resolution has proposed new Rule 10334 (the ''Proposed Rule'') to permit parties in an arbitration to communicate directly with the arbitrators if all parties and arbitrators agree, and to establish guidelines for such direct communication. Only parties that are represented by counsel may use direct communication with the arbitrators under the Proposed Rule. If, during the proceeding, a party chooses to appear *pro se* (without councel), the Proposed Rule would no longer apply. Before it can be used, all arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or during a later conference or hearing. The scope of direct communication will be set forth in an arbitrator order, and parties may send the arbitrators only the types of items that are listed in the order. Parties may not orally communicate with any of the arbitrators outside the presence of all parties.

The Proposed Rule provides that either an arbitrator or a party may rescind his or her agreement at any time after giving written notice to the other arbitrators and the parties. Materials must be sent at the same time and in the same manner to all parties and the Director of Arbitration (through the assigned NASD staff member), and NASD staff must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.[7]

III. Summary of Comments

The Commission received two comments regarding the proposed rule change.[8] Both comments were supportive.[9] One commenter, which

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 140.19b–4.

[3] *See* letter from Jean Feeney, Vice President and Chief Counsel, Dispute Resolution, NASD, to Katherine England, Assistant Director, Division of Market Regulation, SEC (Feb. 20, 2004).

[4] *See* Securities Exchange Act Release No. 49688 (May 12, 2004), 69 FR 28966.

[5] *See* letter from Rosemary J. Shockman, Vice-President/President Elect, Public Investors Arbitration Bar Association, to Jonathan G. Katz, Secretary, SEC (June 7, 2004) (''PIABA Letter''). *See also* E-mail from Joel E. Davidson, Davidson and Grannum, LLP, to Jonathan G. Katz, Secretary, SEC (May 21, 2004) (''Davidson E-mail'').

[6] *See* letter from Jean Feeney, Vice President and Chief Counsel, Dispute Resolution, NASD, to Katherine England, Assistant Director, Division of Market Regulation, SEC (June 29, 2004).

[7] Parties may send materials by regular mail, overnight courier, facsimile or e-mail. All the arbitrators and parties must have facsimile or e-mail capability before such a delivery method may be used. The Proposed Rule contains a provision stating that materials more than fifteen pages long shall be sent to the Director only by mail or courier, to avoid tying up busy fax machines and printers. Arbitrators (or parties) with similar concerns could include a similar provision as to themselves in the direct communication order. NASD will prepare a template for direct communication orders to guide the arbitrators and parties in considering these issues.

[8] As was discussed in the Notice of Proposed Rule Change published in the **Federal Register** on May 19, 2004, the Proposed Rule is modeled on a pilot project conducted by the Chicago Office of NASD Dispute Resolution. *See* Securities Exchange Act Release No. 49688 (May 12, 2004), 69 FR 28966.

[9] *See supra* note 5.

states that its member attorneys represent public investors in disputes with broker-dealers, supports the proposal, noting that its members have generally found direct communication with arbitrators to be helpful.[10] The other commenter observed that the Proposed Rule would expedite and simplify the [arbitration] process.[11]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[12] The Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,[13] which requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the Proposed Rule will protect investors and the public interest by expediting the arbitration process and giving parties more control over their arbitration cases. In addition, the proposal will help promote just and equitable principals of trade by permitting parties to more quickly and easily resolve their disputes.

Significantly, the Proposed Rule has a number of safeguards that will prevent its abuse and protect the rights of both parties and arbitrators. First, all parties and arbitrators must agree to the use of direct communications during the Initial Prehearing Conference or at a later hearing or conference before direct communications can be used. Second, any party or arbitrator may terminate the use of direct communications under the Proposed Rule after giving written notice to the other arbitrators and the other parties. Third, only parties that are represented by counsel may use direct communication with the arbitrators under the Proposed Rule. Fourth, if, during the proceeding, a party chooses to appear *pro se,* the Proposed Rule would no longer apply. Fifth, copies of all materials sent to arbitrators must also be sent at the same time and in the same manner to all parties and to the Director of Arbitration. Sixth, if material are sent via facsimile or e-mail, all arbitrators and parties must have facsimile or e-mail capacity before such a delivery method may be used. Finally, parties may not communicate orally with any of the arbitrators outside of the presence of all parties.

V. Amendment No. 2

In Amendment No. 2 to Proposed Rule, NASD added language to the text of paragraph (h) of Proposed Rule 10334 in order to clarify that parties in an arbitration may not communicate orally with any of the arbitrators outside of the presence of all the parties.[14] The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that Amendment No. 2 effects a technical change that does not raise substantive issues. Accordingly, the Commission believes that there is good cause, consistent with section 19(b) of the Act,[15] to approve Amendment No. 2 on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2003–163 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2003–163. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2003–163 and should be submitted on or before July 29, 2004.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASD–2003–163) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15490 Filed 7–7–04; 8:45 am]

BILLING CODE 8010–01–M

[10] PIABA Letter (''PIABA supports the proposed rule change.'').

[11] Davidson E-mail (''I am in favor of the proposed rule. I believe it will expedite and simply the process.'').

[12] In approving the proposal, the Commission has considered the Proposed Rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–3(b)(6).

[14] *See supra* note 6.

[15] 15 U.S.C. 78s(b).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49954; File No. SR–NYSE–2004–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend Its Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Phone on the Exchange Floor

July 1, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot program that amends NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange (''Pilot'') until November 30, 2004. The Pilot was in effect on a six-month pilot basis expiring on June 16, 2004.[3] The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48919 (December 12, 2003), 68 FR 70853 (December 19, 2003) (SR–NYSE–2003–38).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission originally approved the Pilot to be implemented as a six-month pilot[4] beginning no later than June 23, 2003.[5] The Exchange extended the Pilot for an additional six months ending on June 16, 2004.[6] The Exchange represents that no regulatory actions or administrative or technical problems, other than routine telephone maintenance issues, have resulted from the Pilot, over the past few months. Therefore, the Exchange seeks to extend the Pilot until November 30, 2004, while the Exchange makes a request to the Commission for permanent approval of the Pilot.[7]

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Prior to the Pilot, NYSE Rule 36.20 prohibited the use of portable telephone communications between the Trading Floor and any off-Floor location, and the only way that voice communication could be conducted by Floor brokers between the Trading Floor and an off-Floor location was by means of a telephone located at a broker's booth. These communications often involved a customer calling a broker at the booth for ''market look'' information. Prior to the Pilot, a broker could not use a portable phone in a trading crowd at the point of sale to speak with a person located off the Floor.

The Exchange is proposing to extend the Pilot until November 30, 2004. The Pilot would amend NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor. Thus, with the approval of the Exchange, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as ''market look'' observations as have historically been routinely transmitted from a broker's booth location. Use of a portable telephone on the Exchange Floor other than one authorized and issued by the Exchange would continue to be prohibited.

Furthermore, both incoming and outgoing calls would continue to be allowed, provided the requirements of all other Exchange rules have been met. A broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture (''FESC'') electronic database.[8] In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to engage in such direct access business under Exchange Rules 342 and 345, among others.[9]

In addition, since the Exchange currently permits portable communications at the point of sale for orders in Investment Company Units (as defined in section 703.16 of the Listed Company Manual), also known as Exchange-Traded Funds (''ETFs''),[10] and the Pilot would allow for the use of portable phones for orders in ETFs, orders in ETFs would also be subject to the same FESC requirements as orders in any other security listed on the Exchange.

As noted above, under the policy prior to the Pilot, an off-Floor customer could communicate with a broker in a trading crowd only in an indirect way by calling a broker's booth and using the booth clerk as an intermediary. The

[4] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR–NYSE–2002–11) (''Original Order'').

[5] *See* Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR–NYSE–2003–19) (delaying the implementation date for portable phones from on or about May 1, 2003 to no later than June 23, 2003).

[6] *See* note 3, *supra.*

[7] *See* note 20, *infra.* To date the Exchange has not submitted such a request.

[8] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25). *See also* Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

[9] For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, *see* Information Memos 01–41 (November 21, 2001), 01–18 (July 11, 2001) (available on *www.nyse.com/regulation*) and 91–25 (July 8, 1991).

[10] Previously, under an exception to NYSE Rule 123(e), orders in ETFs could first be executed and then entered into FESC. However, in SR–NYSE–2003–09, the Exchange eliminated the exception to NYSE Rule 123(e) for ETFs, and, as part of its proposal in SR–NYSE–2002–11, allowed the use of portable phones for orders in ETFs. *See* Securities Exchange Act Release No. 47667 (April 11, 2003), 68 FR 19063 (April 17, 2003). NYSE Rule 123(e) provides that all orders in any security traded on the Exchange be entered into FESC before they can be represented in the Exchange's auction market.

Exchange believes that the extension of the Pilot would enable the Exchange to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal of orders and the execution of trades, and provide an enhanced level of service to customers in an increasingly competitive environment.[11] By enabling customers to speak directly to a Floor broker in a trading crowd on an Exchange authorized and issued portable telephone, the Exchange believes that the proposed rule change would expedite and make more direct the free flow of information, which, prior to the Pilot, had to be transmitted somewhat more circuitously via the broker's booth.

The Exchange also notes that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.[12] The amendment to NYSE Rule 36 would not apply to specialists, who would continue to be prohibited from speaking from the post to upstairs trading desks or customers.

Pilot Program Results

Since the Pilot's inception, the Exchange represents that there have been approximately 800 portable phone subscribers. In addition, with regard to portable phone usage, for a sample week of February 2, 2004 through February 6, 2004, an average of 19,363 calls per day were originated from portable phones, and an average of 4,911 calls per day were received on portable phones. Of the calls originated from portable phones, an average of 16,525 calls per day were internal calls to the booth, and 2,838 calls per day were external calls. Thus, over 85% of the calls originated from portable phones were internal calls to the booth. With regard to received calls, of the 4,911 average calls per day received, an average of 2,171 calls per day were external calls, and an average of 2,740 calls per day were internal calls received from the booth. Thus, approximately 56% of all received calls were internally generated, and 44% were calls from the outside.

The Exchange represents that no regulatory actions or administrative or technical problems, other than routine telephone maintenance issues, have resulted from the Pilot since its inception. The Exchange believes that the Pilot appears to be successful in that there is a reasonable degree of usage of portable phones, but as noted earlier, no 3 regulatory or administrative or technical problems associated with their usage. The Exchange believes that the Pilot appears to facilitate communication on the Floor without any corresponding drawbacks. Accordingly, the Exchange believes it is appropriate to extend the Pilot until November 30, 2004. During this period, the Exchange intends to file for permanent approval of the Pilot by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[13] in general, and furthers the objectives of section 6(b)(5) of the Act[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the amendment to NYSE Rule 36 would support the mechanism of free and open markets by providing for increased means by which communications to and from the Floor of the Exchange may take place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Act,[15] and Rule 19b–4(f)(6) thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 30-day operative period under Rule 19b–4(f)(6)(iii).[17] The Exchange believes that the continuation of the Pilot is in the public interest as it will avoid the inconvenience and interruption to the public and members of the Exchange currently using portable phones on the Exchange floor. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective upon filing on June 15, 2004.[18] The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its Pilot until November 30, 2004.

The Commission believes that the use of Exchange authorized and issued portable telephones would allow the Exchange to have access to all phone records. This ability to track phone calls, along with the data captured in FESC, should aid the Exchange in surveilling for compliance with Exchange rules. In this regard, the

[11] *See, e.g.*, Securities Exchange Act Release No. 43493 (October 30, 2000), 65 FR 67022 (November 8, 2000) (SR–CBOE–00–04), (expanding the Chicago Board Options Exchange, Inc.'s existing policy and rules governing the use of telephones at equity option trading posts by allowing for the receipt of orders over outside telephone lines, from any source, directly at equity trading posts), and Securities Exchange Act Release No. 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (SR–PCX–00–33) (discussing and approving the Pacific Exchange, Inc.'s proposal to remove current prohibitions against Floor brokers' use of cellular or cordless phones to make calls to persons located off the trading floor).

[12] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 requires,[19] and that orders are being handled in compliance with NYSE rules. The Commission expects the Exchange to actively review these procedures and address any potential concerns that have arisen during the extension of the Pilot. The Commission also requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. As stated in the Original Order, the NYSE should also address whether additional surveillance would be needed because of the derivative nature of the ETFs. Furthermore, if the NYSE decides to request permanent approval or another extension of the Pilot, we would expect that the NYSE submit information documenting the usage of the phones, any problems that have occurred, including, among other things, any regulatory actions or concerns, and any advantages or disadvantages that have resulted.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment for (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–30 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–30 and should be submitted on or before July 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15489 Filed 7–7–04; 8:45 am]

BILLING CODE 8010–01–P

[19] *See* note 8 *supra,* and accompanying text for other NYSE requirements that Floor brokers be properly qualified before doing public customer business.

[20] This information along with any proposal to extend, or permanently approve, the pilot should be submitted no later than August 31, 2004.

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3585]

State of Indiana (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 25, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 27, 2004, and continuing through June 25, 2004.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 1, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15479 Filed 7–7–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3578]

State of Iowa (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 24, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 19, 2004, and continuing through June 24, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 26, 2004, and for economic injury the deadline is February 25, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 30, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15478 Filed 7–7–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3586]

State of Ohio (Amendment #3)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 21, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 18, 2004, and continuing through June 21, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 1, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15476 Filed 7–7–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #359]

Commonwealth of Virginia (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 29, 2004, the above numbered declaration is hereby amended to include Buchanan County as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on May 24, 2004, and continuing through June 26, 2004. In addition, applications for economic injury loans from small businesses located in the contiguous county of Pike in the Commonwealth of Kentucky; and Mingo County in the State of West Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damages is August 16, 2004, and for economic injury the deadline is March 15, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 1, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15474 Filed 7–7–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3592]

Commonwealth of Virginia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 26, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 24, 2004, and continuing through June 26, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 16, 2004, and for economic injury the deadline is March 15, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 30, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15475 Filed 7–7–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3587]

State of West Virginia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 28, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 27, 2004, and continuing through June 28, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 6, 2004, and for economic injury the deadline is March 7, 2005. (Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 1, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–15477 Filed 7–7–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.1419–1A, Certification of Transport Category Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: The FAA announces the issuance of Advisory Circular 25.1419–1A, ''Certification of Transport Category Airplanes in Flight Icing Conditions.'' The advisory circular provides guidance for certification of airframe ice detection and protection systems on transport category airplanes, including a revised description of information that an applicant should include in a certification plan.

DATES: AC 25.1419–1A was issued by the FAA Transport Airplane Directorate in Renton, Washington, on May 7, 2004.

How To Obtain Copies: A copy of Advisory Circular 25.1419–1A can be downloaded from the Internet at *http://www.airweb.faa.gov/rgl.* A paper copy will be available in approximately 6–8 weeks from the U.S. Department of Transportation, Subsequent Distribution Office, M–30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20795.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist, FAA Standardization Branch, ANM–113, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2126.

Background

Paragraph 3, Analyses, of AC 25.1419–1A, describes information that should be included in a certification plan submitted by the applicant.

Applicants have erroneously thought this note allowed adequate analysis and testing to preclude the requirement for flight test demonstrations. However, 14 CFR 25.1419(b) at amendment level 25–72 requires flight testing in natural icing conditions as a means to verify the analyses required by paragraph (a) to check for icing anomalies, and to demonstrate that the ice protection system and its components are effective. Guidance material may not supersede the rule and, therefore, Note 2 does not preclude the need for flight testing in natural icing conditions.

As part of a new type certification program, flight in natural icing conditions is required to show compliance with § 25.1419(b). In addition to flight in natural icing conditions, additional wind tunnel, laboratory, and other flight tests may be required to verify the analyses required by § 25.1419(a). However, under some circumstances, flight test data acquired on a previous certification program may be found to be applicable to a new or modified airplane (such a derivative model). To use the previous flight test data, the applicant is required to provide supporting data and rationale that show:

a. The original flight test data is applicable (similarity).

b. The applicant possesses the flight test data.

c. The new or modified configuration is safe for flight in icing conditions.

Because of the erroneous interpretations, the AC has been revised to provide further clarification of this issue.

Issued in Renton, Washington, on May 7, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–15557 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation; Waiver of Liquid Propellant Storage and Handling Requirements for Operation of a Launch Site at the Mojave Airport in CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of waiver.

SUMMARY: The FAA has determined to waive the liquid propellant storage and handling requirements of 14 CFR part 420 for East Kern Airport District's operation of a launch site at Mojave, California, under a license issued by the FAA on June 17, 2004. The FAA finds that waiving the liquid propellant storage and handling requirements is in the public interest and will not jeopardize public health and safety, safety of property, and national security and foreign policy interests of the United States.

FOR FURTHER INFORMATION CONTACT: Carole Flores, Manager, Licensing and Safety Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591, (202) 385–4701.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration (FAA) licenses the launch of a launch vehicle, reentry of a reentry vehicle, and operation of a launch or reentry site under authority granted to the Secretary of Transportation in the Commercial Space Launch Act of 1984, as amended (CSLA), codified in 49 U.S.C. Subtitle IX, chapter 701, and delegated to the FAA Administrator. Licensing authority under the CSLA is carried out by the Associate Administrator for Commercial Space Transportation.

The CSLA allows the FAA to waive a requirement for an individual license applicant if the Administrator decides that the waiver is in the public interest and will not jeopardize public health and safety, safety of property, and national security and foreign policy interests of the United States (see 49 U.S.C. 70105(b)(3)).

On June 17, 2004, the FAA issued a launch site operator license authorizing East Kern Airport District (EKAD) to operate a launch site at Mojave Airport in Mojave, California. The license, issued in accordance with licensing requirements under 14 CFR part 420, is valid for five years. The license authorizes EKAD to operate a launch site at Mojave Airport in support of suborbital Reusable Launch Vehicle (RLV) missions authorized by an FAA license to take-off at Mojave Airport. EKAD is responsible for ensuring the safe operation of the Mojave Airport launch site and for ensuring that public safety and safety of property are protected at all times during licensed site activities.

EKAD's application for a launch site operator license had several unique attributes relevant to public safety and explosive siting. For example, EKAD's application was the first to propose support of RLV launches, exclusively. Also, EKAD's proposed explosive site plan did not comply with the liquid propellant storage and handling requirements of 14 CFR part 420. Specifically, EKAD's proposed explosive site plan included separation distances between an explosive hazard facility and the public that violated the requirements of 14 CFR 420.67 for storage and handling of liquid oxygen and hydrocarbon fuels.

The explosive siting requirements for liquid propellant in 14 CFR 420.67 address how the explosive equivalent, as defined in 14 CFR 420.5, should be determined based on various conditions principally related to the quantities of energetic liquids present. The explosive equivalent for energetic liquids depends on the quantity of fuel and oxidizer that are mixed. Therefore, a principal objective of an explosive site plan is to provide safeguards that prevent the mixing of incompatible energetic liquids. Physical separation is the preferred method to safeguard against mixing of stored energetic liquids. For operations that present an unavoidable potential for mixing of incompatible energetic liquids, such as static test firings of engines, the requirements in 14 CFR 420.67 prescribe minimum separation distances between the explosive hazard facility and the public. EKAD's proposed explosive site plan did not comply with the minimum separation distances prescribed in 14 CFR 420.67.

The explosive site plan requirements of 14 CFR part 420, issued in October of 2000, captured the state of knowledge of explosives safety at launch sites and were intended to provide for public safety and the safety of property. The requirements for storage and handling of liquid propellants in 14 CFR 420.67 are prescriptive in nature, and based on previous Department of Defense (DoD) standards that were developed by the Department of Defense Explosives Safety Board (DDESB) from experience gained with sites supporting launches of expendable launch vehicles. While launch sites supporting RLV missions are covered by part 420, as evidenced by the explicit location review requirements for RLVs in § 420.23(d), the explosive site plan requirements of part 420 did not take into account differences in explosive hazards associated with RLVs that take off from a runway from those associated with vehicles that lift-off vertically, with explosive thrust, from a launch pad. No performance standards were available for explosive site plans when part 420 was published, nor did the FAA establish one in promulgating the part 420 regulations. The state of knowledge of explosive safety and DoD standards continued to evolve since the issuance by the FAA of part 420, especially in the area of energetic liquids used for launch. Specifically, the DoD has revised its requirements regarding: (1) the minimum separation distances between the public and storage sites for energetic liquids involved with launch operations and (2) the minimum separation distances between the public and sites where the explosive equivalent is less than 450 pounds.

The supplementary information accompanying issuance of part 420 discusses ''Future Change in Liquid Propellant Requirements'' and acknowledges the following:

1. ''A number of possible irregularities and inconsistencies have been identified in the current approach to siting liquid propellants.''

2. ''Because the DDESB is possibly the best equipped group in the country to address these issues, the FAA will carefully consider its recommendations.''

3. ''DoD Standard 6055.9 is perhaps the best example of a standard governing many more explosive safety issues than those addressed to date in this part.''

(See 65 FR 62819, issued October 19, 2000.)

In the part 420 rulemaking, the FAA acknowledged that (1) the rule's approach to siting liquid propellants was not perfect, (2) the DDESB is a highly credible group, and (3) its Ammunition and Explosives Safety Standards, DoD 6055.9–STD, August 11, 1997, the source of part 420 explosive siting requirements, is a more comprehensive standard than part 420.

The FAA has monitored the continuing evolution of liquid propellant siting requirements in DoD 6055.9–STD. The FAA maintains that public safety is provided by using an explosive site plan that complies with the current requirements of DoD

6055.9–STD. The DDESB's most current requirements are in the ''Rewrite DoD 6055.9–STD, Revisions 4 and 5, Jan 2004,'' which is referred to herein as DoD 6055.9–STD, Rev 4,5. According to the DDESB website, this latest version of DoD 6055.9–STD ''is the version of the Standard that is being maintained by the Secretariat of the DDESB, and that is kept current as the DDESB approves criteria changes.'' (See *http://www.ddesb.pentagon.mil/documents.html.*) Although the DoD has not formally adopted this latest version of 6055.9–STD, the Chairman of the DDESB instructed the DDESB Secretariat to ''begin using the 're-write' version of the DoD 6055.9–STD (latest revision), when conducting surveys, reviews of site plans, and the work of the Board'' in a memorandum dated 26 August 2003, Subject: Department of Defense Explosives Safety Board (DDESB) Secretariat's Working Copy of DoD 6055.9–STD). This memorandum is also available at the DDESB Web site.

Paragraph C9.5.6 of 6055.9–STD, Rev 4,5 provides insight into the applicability of the DoD 6055.9–STD ''Quantity-Distance'' (QD) standards to a launch site from which RLVs takeoff and land using runways, as opposed to lifting off from a launch pad. It provides:

> Paragraph C9.5.6. QD standards. Since many energetic liquids are not classified as UN Class 1 explosives, conventional QD storage criteria do not generally apply to these materials. At the same time, the (non-Class 1) UN transportation hazard classifications for many energetic liquids appear to be inappropriate and/or inadequate for application to storage safety (based on available accident and test data). For example, hydrazine has a UN hazard classification of 8 (corrosive), while it also is subject to dangerous fire and explosive behavior. Thus, the implementation of QD criteria for energetic liquids is based on an independent determination of the predominant hazard presented by the material in the storage environment. The following standards are applicable to energetic liquids used for propulsion or operation of missiles, rockets, and other related devices.

Accordingly, the energetic liquids standards presented in 6055.9–STD, Rev 4,5, apply to energetic liquids used for propulsion or operation of missiles, rockets, and other related devices, including those RLVs that are authorized to use Mojave Airport as a launch site. The FAA has determined that 6055.9–STD, Rev 4,5 provides an acceptable level of public safety for energetic liquids to be stored and handled at the EKAD launch site.

Subparagraphs C9.5.5.6 through C9.5.5.6.12, of DoD 6055.9–STD, Rev 4,5, acknowledge that ''the predominant hazard of the individual energetic liquids can vary depending upon the location of the energetic liquid storage and the operations involved.'' A list of various energetic liquid storage and handling operations in decreasing order of hazard: launch pads,[1] static test stands,[2] ready storage, cold flow test operations, bulk storage, rest storage, run tankage, and pipelines is also provided. Horizontal takeoff RLV operations are not on this list. Although RLVs were considered during the promulgation of part 420, as evidenced by the location review requirements for RLVs in § 420.23(d), the explosive site plan requirements of part 420 were taken from standards that were developed from experience gained with sites supporting vertical lift-off from a launch pad.

The FAA has assessed the nature and hazards of the proposed operations to be conducted at the Mojave Airport launch site in support of horizontal takeoff RLVs. The FAA considers that operations involving energetic liquids in support of certain RLVs, conducted under the conditions specified below, will produce explosive hazards more akin to static test stands than launch pads. Specifically, the FAA considers that, under certain conditions, the explosive equivalent estimated for ground operations involving horizontal takeoff RLVs may safely exclude the energetic liquid contained in the run tanks.[3] The FAA also considers that the standards of DoD 6055.9–STD, Rev 4,5, will achieve the public safety goal of part 420 while allowing less separation distance between explosive substances. For example, whereas part 420 would require 130 feet between the proposed liquid oxygen storage location and the public at the Mojave Airport launch site, use of DoD 6055.9–STD, Rev 4,5, allows for a separation distance of 1,000 feet.

Therefore, the FAA finds that public safety and the safety of property will not be jeopardized by allowing use of revised standards issued in DoD 6055.9–STD, Rev 4,5, for storage and handling of liquid propellants at EKAD.

[1] Paragraph C.9.5.5.6.1 states that launch pad operations ''are very hazardous because of the proximity of fuel and oxidizer to each other, the frequency of launchings, lack of restraint of the vehicle after liftoff, and the possibility of fallback with resultant dynamic mixing on impact.''

[2] Paragraph C.9.5.5.6.2 states that static test stand operations ''are less hazardous because test items are restrained and subject to better control than launch vehicles. As with launch pads, the proximity of fuel and oxidizer presents a significant hazard.

[3] The run tanks consist of the tank and other containers and associated piping used to hold the energetic liquids for direct feeding into the engine or device during operation.

Accordingly, the FAA has determined that it is in the public interest to waive compliance by EKAD with 14 CFR 420.67, subject to compliance by EKAD with the following conditions:

A. In place of compliance with 14 CFR 420.67, EKAD is required to submit a revised explosive site plan (referred to herein as ''the plan'') that complies with all applicable requirements of ''Rewrite DoD 6055.9–STD Rev 4,5, Jan 2004'' (referred to herein as DoD 6055.9–STD, Rev 4,5), pertaining to storage, handling, and static test firings involving energetic liquids. EKAD must comply with all other requirements of 14 CFR 420.63(a).

B. EKAD will maintain the configuration of the launch site in accordance with the plan as approved by the FAA.

C. ''Minimal allowable distances'' under 14 CFR 420.63(a)(1) must be calculated in accordance with DoD 6055.9–STD, Rev 4,5, requirements.

D. Any liquid oxygen stored in support of a launch vehicle ground operation, such as propellant loading or static test firing, must be separated from public areas by a minimum of 100 feet. (See Table C9.T21 of DoD 6055.9–STD, Rev 4,5.)

E. Any Occupational Safety and Health Administration (OSHA), National Fire Protection Association (NFPA), or both, Class I–III flammable and combustible fuel stored in support of a launch vehicle ground operation, such as propellant loading or static test firing, must be separated from public areas by a minimum of 50 feet. (See Table C9.T19 of DoD 6055.9–STD, Rev 4,5.)

F. Positive measures for spill containment and control are required for isolated storage of energetic liquids in accordance with applicable OSHA and NFPA guidance (referenced in Tables C9.T19 through C9.T21 of DoD 6055.9–STD, Rev 4,5). For flammable energetic liquids and liquid oxidizers where only minimum blast or fragment distances are specified, applicable OSHA and/or NFPA guidance referenced in Tables C9.T19 and C9.T20 of DoD 6055.9–STD, Rev 4,5, must also be used.

G. For any launch vehicle ground operation where incompatible energetic liquids are capable of mixing, the plan must require the launch site operator to document in advance the estimated net explosive weight (NEW) and the corresponding minimum separation distances to public areas, including public roads, based on DoD 6055.9–STD, Rev 4,5 requirements.

H. For any launch vehicle ground operation where incompatible energetic liquids are capable of mixing, the plan

must require that minimum separation distances are used to protect all public areas, including public roads, based on the estimated net explosive weight (NEW) and DoD 6055.9–STD, Rev 4,5, requirements.

I. For any ground operation where any energetic liquid is present in support of a launch vehicle, including storage and handling, the plan must require the launch site operator to document in advance the minimum separation distances to public areas, including public roads, based on DoD 6055.9–STD, Rev 4,5, requirements.

J. For any ground operation where any energetic liquid is present in support of a launch vehicle, including storage and handling, the plan must require that minimum separation distances are used to protect all public areas, including public roads, based on DoD 6055.9–STD, Rev 4,5, requirements.

K. For operations involving energetic liquid transfer to or from a RLV, and static test firings of an RLV with energetic liquid present, the plan must require the following: (The source that gave rise to each standard is in parentheses.)

1. All tanks must be hydrostatically proof tested to 1.5 times the maximum expected operating pressure. (See paragraph C9.5.5.6.2.1 of DoD 6055.9–STD, Rev 4,5.)

2. For cryogenic propellants, the tank wall will be surrounded by insulation, and the insulation will be covered by a secondary shell (which may be the vehicle skin), to reduce the risk of damage to the tank wall. (See paragraph C9.5.5.6.2.2 of DoD 6055.9–STD, Rev 4,5.)

3. All tanks will be fitted with pressure relief devices; the set point and tolerance of these devices shall be such that they are closed at maximum expected operating pressure, and that they open before reaching the hydrostatic proof test pressure. (Compressed Gas Association, Oxygen, publication G–4, edition 9, Dec. 1,1996, republished Sept 4, 2002, paragraph 3.2.3 (CGA G4))

4. Transfer operations for oxidizer must take place over a non-combustible surface such as concrete or earth. In particular, asphalt pavement is a porous combustible material that must not be exposed to liquid oxygen. (CGA G–4, 1996, paragraph 6.1.1)

5. Both the fuel and oxidizer lines must contain two independent, redundant valves to shut off the flow in the event of a malfunction. (See paragraph C9.5.5.6.2.4 of DoD 6055.9–STD, Rev 4,5.)

6. The design is such that the system is closed except for approved venting while propellant is not being fed to the engine. (See paragraph C9.5.5.8 of DoD 6055.9–STD, Rev 4,5.)

7. Once fuel is transferred into the system, the fuel system is closed off and made airtight, preventing ingress of oxygen vapor into the fuel system or escape of fuel vapor. (See paragraph C9.5.5.8 of DoD 6055.9–STD, Rev 4,5.)

8. Fuel and oxidizer are never transferred to or from the system concurrently. (See paragraph C9.5.5.8 of DoD 6055.9–STD, Rev 4,5.)

9. The fuel and oxidizer systems must be separated from each other; it must not be possible for any commanded or accidental valve action to cross-connect the fuel and oxidizer system, and the design of the ullage pressurization system must prevent cross-flow of fuel and oxidizer. (See paragraph C9.5.5.8 of DoD 6055.9–STD, Rev 4,5.)

10. The fuel and oxidizer transfer fittings must have separate and physically incompatible fitting types or other means to prevent connecting the wrong fill hose to the fill port. (See paragraph C9.5.5.8 of DoD 6055.9–STD, Rev 4,5.)

11. Propellants used must not be contaminated (*i.e.*, no fuel in the oxidizer, no oxidizer in the fuel). (See paragraph C9.5.5.8 of DoD 6055.9–STD, Rev 4,5.)

12. The vehicle tankage must be protected from fragments produced by an engine hard start. (See C9.5.5.6.2.3 of DoD 6055.9–STD, Rev 4,5.)

13. No common bulkhead exists between the fuel and oxidizer; the space between them must be drained and vented, such that it takes two independent punctures of fuel and oxidizer tanks to make mixing possible and that such a leak would be drained from the intertank volume.

14. Whenever the system is in a ready-to-fire state, such that a single malfunction or erroneous action would allow fuel and oxidizer to enter the engine combustion chamber, areas around the vehicle, including public roads, must be kept free of the public. Minimum distances shall be based upon the explosive equivalence and other requirements of DoD 6055.9–STD, Rev 4,5 .

Based on the foregoing reasons and conditions, the FAA has waived the liquid propellant storage and handling requirements of 14 CFR part 420 for East Kern Airport District to operate a launch site at Mojave Airport, California, and requires in their place, compliance by EKAD with requirements of DoD 6055.9–STD, Rev 4,5, and certain conditions as described in this Notice. The FAA is considering whether to initiate rulemaking to revise requirements for explosive siting under 14 CFR part 420 based upon DoD 6055.9–STD, Rev 4,5.

Issued in Washington, DC, on June 30, 2004.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 04–15551 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–39]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 2, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10876.

Petitioner: Experimental Aircraft Association, Inc.

Section of 14 CFR Affected: 14 CFR 91.319(a)(2), 119.5(g), and 119.21(a).

Description of Relief Sought/ Disposition: To permit Experimental Aircraft Association, Inc., to operate the Boeing B–17G, N9563Z in addition to the Boeing B–17.

Grant, 6/18/2004 , Exemption No. 6541H.

Docket No.: FAA–2000–8533.

Petitioner: Israel Aircraft Industries, Ltd.

Section of 14 CFR Affected: 14 CFR 61.77(a).

Description of Relief Sought/ Disposition: To permit pilots employed

by or under contract to Israel Aircraft Industries to obtain special purpose pilot authorizations in order to perform certain flights of aircraft being delivered by Israel Aircraft Industries from its facilities within Israel, the U.S., and at a number of locations throughout the World, for Israel Aircraft Industries' U.S. and international customers, subject to certain conditions and limitations.

Grant, 6/18/2004, Exemption No. 7406C.

Docket No.: FAA–2001–10362.

Petitioner: Alpine Aviation, Inc., d.b.a. Alpine Air.

Section of 14 CFR Affected: 14 CFR 61.51(e)(1).

Description of Relief Sought/ Disposition: To permit certain Alpine Air seconds in command who perform ''the duties of pilot in command (PIC) under the supervision of a qualified PIC'' to log their flight time in Beechcraft 99 and 1900 airplanes as PIC flight time.

Denial, 6/16/2004, Exemption No. 8343.

Docket No.: FAA–2004–17204.

Petitioner: Mr. Mike Vande Guchte.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Mr. Mike Vande Guchte to conduct local sightseeing flights to benefit Wings of Mercy at the Tulip City Airport, Holland, Michigan, on or about June 19, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 6/18/2004, Exemption No. 8345.

Docket No.: FAA–2002–12562.

Petitioner: Frontier Flying Service, Inc.

Section of 14 CFR Affected: 14 CFR 61.3(a) and (c) and 121.383(a)(2).

Description of Relief Sought/ Disposition: To permit Frontier Flying Service, Inc., to issue to its pilot flight crewmembers written confirmation of an individual Federal Aviation Administration-issued crewmember certificate based upon information in the Frontier Flying Service's approved record system.

Grant, 6/17/2004, Exemption No. 8344.

Docket No.: FAA–2003–15381.

Petitioner: Amerijet International, Inc.

Section of 14 CFR Affected: 14 CFR 91.303(f) and 91.307(c).

Description of Relief Sought/ Disposition: To permit Amerijet International, Inc., to operate a specially modified Boeing 727 aircraft, in accordance with Supplemental Type Certificate No. ST01051LA, on behalf of Zero-G in parabolic flight operations (1) when flight visibility is less than 3 statute miles and (2) without each occupant of the aircraft wearing an approved parachute when the pilot executes an intentional maneuver that exceeds a nose-up or nose-down altitude of 30 degrees relative to the horizon.

Grant, 5/18/2004, Exemption No. 8333.

Docket No.: FAA–2002–12009.

Petitioner: Chautauqua Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit Chautauqua Airlines, Inc., to substitute a qualified and authorized check airman in place of an Federal Aviation Administration inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424.

Grant, 6/15/2004, Exemption No. 7353B.

Docket No.: FAA–2001–8870.

Petitioner: Massachusetts Institute of Technology.

Section of 14 CFR Affected: 14 CFR 91.319(c).

Description of Relief Sought/ Disposition: To permit Massachusetts Institute of Technology to operate certain single-engine and multi-engine aircraft certified in the experimental category, over densely populated areas or in congested airways.

Grant, 6/15/2004, Exemption No. 5210H.

Docket No.: FAA–2002–12152.

Petitioner: Ameriflight, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Ameriflight, Inc., to operate certain aircraft under part 135 without a TSO–C112 transponder (Mode S) installed on those aircraft.

Grant, 6/15/2004, Exemption No. 6830C.

Docket No.: FAA–2000–7945.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 61.57(a) and (b).

Description of Relief Sought/ Disposition: To permit The Boeing Company production and engineering flight test pilots to use any type of Boeing airplane or a Level B, C, or D simulator that represents Boeing aircraft listed in type certificate data sheets A6WE, A16WE, A20WE, A2NM, A1NM, and T00001SE to meet the takeoff and landing recency of experience requirements of § 61.57 in any one of those aircraft types without Boeing holding a part 142 certificate, subject to certain conditions and limitations.

Grant, 6/14/2004, Exemption No. 6843C.

Docket No.: FAA–2001–10425.

Petitioner: National Test Pilot School.

Section of 14 CFR Affected: 14 CFR 91.319(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit the National Test Pilot School to operate aircraft that have experimental certificates to train flight-test students, who are pilots and flight engineers, through the demonstration and practice of flight-test techniques and to teach those students flight-test data acquisition methods for compensation.

Grant, 6/14/2004, Exemption No. 5778I.

Docket No.: FAA–2003–15165.

Petitioner: Palmyra Airport, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Palmyra Airport, Inc., to conduct local sightseeing flights at the Palmyra Airport, Palmyra, Wisconsin, for sightseeing flights on June 20, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 6/14/2004, Exemption No. 8342.

Docket No.: FAA–2004–17684.

Petitioner: Mr. Lee S. Elson.

Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/ Disposition: To permit Mr. Lee S. Elson to conduct certain flight training and to provide simulated instrument flight experience in certain Beech airplanes that are equipped with a functioning throwover control wheel.

Grant, 6/9/2004, Exemption No. 8341.

Docket No.: FAA–2002–12455.

Petitioner: Air Transport Association of America, Inc.

Section of 14 CFR Affected: 14 CFR 61.3(a) and (c), 63.3(a), and 121.383(a)(2).

Description of Relief Sought/ Disposition: To permit the member air carriers of the Air Transport Association of America, Inc., to issue written confirmation of an Federal Aviation Administration-issued crewmember certificate to a flight crewmember employed by that air carrier based on information in the air carrier's approved record system.

Grant, 6/9/2004, Exemption No. 5487F.

Docket No.: FAA–2004–18018.

Petitioner: Crossville Memorial Airport.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Crossville Memorial Airport to conduct local sightseeing flights at the Crossville Airport, Crossville, TN, for charity on June 12, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 6/9/2004, Exemption No. 8340.

Docket No.: FAA–2004–17923.

Petitioner: EAA Warbirds of America Squadron 14, Inc.

Section of 14 CFR Affected: 14 CFR 61.63(d)(5).

Description of Relief Sought/ Disposition: To permit EAA Warbirds of America Squadron 14, Inc. (Squadron 14), pilots to conduct nonstop sightseeing or demonstration flights for compensation or hire within 25 statute miles of the departure airport in Squadron 14's Douglas DC–3 (DC–3) airplane (registration No. N2805J, serial No. 20835) without those pilots having completed the practical test for a DC–3 type rating in actual or simulated instrument conditions.

Denial, 6/8/2004, Exemption No. 8339.

Docket No.: FAA–2004–18021.

Petitioner: Safari Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Safari Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 6/8/2004, Exemption No. 8338.

Docket No.: FAA–2004–17389.

Petitioner: Red Baron Flyers, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Red Baron Flyers, Inc., a nonprofit organization, to conduct local sightseeing flights at its annual Fly-In Breakfast at the Houston County Airport, during, June 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 6/18/2004, Exemption No. 8346.

Docket No.: FAA–2003–16343.

Petitioner: Angel Flight South Central.

Section of 14 CFR Affected: 14 CFR 61.113(d)(1)(i), (ii), and (6).

Description of Relief Sought/ Disposition: To permit Angel Flight South Central (AFSC) to solicit funds from numerous corporations to support individual missions flown by AFSC pilots.

Denial, 06/21/2004, Exemption No. 8347.

[FR Doc. 04–15550 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from Tuesday, July 13, 2004, from 2 p.m. to 4:30 p.m. and Wednesday, July14, 2004, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the SeaTac Towers Office Complex, 17930 Pacific Highway S., SeaTac Tower II., Bldg#: 7–181, Seattle, WA 98188.

FOR FURTHER INFORMATION CONTACT: Ms. Sabra Kaulia, Executive Director, ATPAC, System Operations and Safety, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9205.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, July 13, 2004, from 2 p.m. to 4:30 p.m. and Wednesday, July 14, 2004, from 9 a.m. to 4:30 p.m. The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 7, 2004. The next quarterly meeting of the FAA ATPAC is planned to be held from October 4–7, 2004, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 28, 2004.

Sabra Kaulia,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 04–15558 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17539; Notice 2]

Delphi Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

Delphi Corporation (Delphi), has determined that at least one of the fittings on the ends of certain brake hose assemblies that it produced between January 2001 and February 2004 do not comply with S5.2.4 and S5.2.4.1 of 49 CFR 571.106, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, ''Brake hoses.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Delphi has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the petition was published, with a 30 day comment period, on April 20, 2004 in the **Federal Register** (69 FR 21185). NHTSA received no comments.

Delphi produced approximately 1534 aftermarket brake hose assemblies between January 2001 and February 2004 that did not have the manufacturer's logo embossed on the fitting. S5.2.4 requires that:

> Each hydraulic brake hose assembly, except those sold as part of a motor vehicle, shall be labeled by means of a band around the brake hose assembly as specified in this paragraph or, at the option of the manufacturer, by means of labeling as specified in S5.2.4.1.

S5.2.4.1 states that:

At least one end fitting of a hydraulic brake hose assembly shall be etched, stamped or embossed with a designation at least one-sixteenth of an inch high that identifies the manufacturer of the hose assembly.

Delphi believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Delphi states that the subject brake hose assemblies meet the functional performance requirements of the standard for the hose, the fittings, and the assembly, and therefore will perform exactly as intended in the vehicle and will not in any way affect the safety of the vehicle.

Delphi states that, since S5.2.4 allows a band to be placed around the hose as an alternative to embossing the logo on one of the fittings, if the S5.2.4 option had been used, the band would be placed on top of the brake hose, which already contains the same logo, which appears to be redundant. Delphi also asserts that, since the brake hose assemblies at issue are only sold by the vehicle manufacturer's parts division, if the vehicle owner desired to know the brake hose assembly manufacturer, the vehicle manufacturer could provide this information. Delphi states that since these brake hoses are specific to a specific vehicle, and are not sold at normal consumer automotive retail outlets, the person desiring to replace the brake hose assembly could only find them at the vehicle manufacturer's authorized outlet.

The agency agrees that the noncompliance of the brake hose assemblies is inconsequential to motor vehicle safety. Because the manufacturer of the hose and the fitting are the same, and the manufacturer's logo that should be on the fitting is printed on all of the hose that is part of the assembly, in this particular case the label on the brake hose fitting is redundant to the label on the brake hose itself. Delphi has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Delphi's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: July 1, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–15563 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17439; Notice 2]

Kia Motors America, Inc. and Kia Motors Corp., Grant of Petition for Decision of Inconsequential Noncompliance

Kia Motors America, Inc. and Kia Motors Corp. (Kia) have determined that certain vehicles that Kia produced do not comply with provisions of Federal Motor Vehicle Safety Standard (FMVSS) Nos. 101, ''Controls and displays,'' 105, ''Hydraulic and electric brake systems,'' and 135, ''Passenger car brake systems.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Kia has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the petition was published with a 30 day comment period on April 20, 2004 in the **Federal Register** (69 FR 21188). NHTSA received no comments.

A total of approximately 496,058 vehicles are affected. These vehicles do not meet the letter height requirements for brake system warning lights for the abbreviation ''ABS'' and in some cases the word ''brake.'' FMVSS No. 101, ''Controls and displays,'' Table 2, Column 3, ''Identifying Words or Abbreviation,'' with regard to brake systems says, ''* * * *see* FMVSS 105 and 135.'' S5.3.5 of FMVSS No. 105, ''Hydraulic and electric brake systems,'' requires that ''Each indicator lamp shall display word, words or abbreviation * * * which shall have letters not less than ⅛ -inch high.'' S5.5.5 of FMVSS No. 135 requires that ''Each visual indicator shall display a word or words * * * [which] shall have letters not less than 3.2 mm (⅛inch) high.''

A total of 460,792 vehicles do not meet the letter height requirements for the word ''brake'' and abbreviation ''ABS'' for brake warning systems. These noncompliant vehicles are 143,046 MY 2000–2001 Sephias with a ''brake'' letter height of 2.2 mm and an ''ABS'' letter height of 1.7 mm, 128,565 MY 2002–2004 Sedonas with a ''brake'' letter height of 1.9 mm and an ''ABS'' letter height of 1.9 mm, and 189,181 MY 2000–2004 Spectras with a ''brake'' letter height of 2.2 mm and an ''ABS'' letter height of 1.7 mm.

An additional 35,266 vehicles do not meet the letter height requirements for the abbreviation ''ABS.'' These noncompliant vehicles are 957 MY 1995–1999 Sephias with an ''ABS'' letter height of 2.8 mm, 33,023 MY 2003–2004 Sorentos with an ''ABS'' letter height of 1.9 mm, and 1286 MY 2001–2004 Rios with an ''ABS'' letter height of 2.0 mm.

Kia believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. Kia states that the brake and ABS system warning lights are positioned for ready viewing by the driver, and that they are illuminated in red (brake warning light) or yellow (ABS light), colors that are generally understood by vehicle users to be indicators of unsafe condition.

Kia further states that the brake and antilock system warning lights in all the Kia vehicles involved in this petition include an International Standards Organization (ISO) symbol combined with the word ''brake'' or the abbreviation ''ABS.'' Kia states that it believes the ISO symbols which it uses in conjunction with the word ''brake'' and abbreviation ''ABS'' are commonly understood by the driving public. Kia says that, although the ''brake'' or ''ABS'' lettering within the warning light is less than the minimum letter height standard of 3.2 mm, the combined height of the entire brake or ABS warning light symbol and lettering ranges from a low of 6 mm for the brake light in the Kia Sephia to a high of 6.8 mm for the ABS light in the Kia Sedona, which significantly exceeds the 3.2 mm standard of FMVSS Nos. 101, 105, and 135.

Kia asserts that all these factors combine to assure an easily identifiable and readable display. In this regard, Kia points out that in 1982, NHTSA granted a Subaru of America, Inc. petition involving passenger vehicles where the lettering of ''brake'' was only 2.2 mm high, but which used the ISO symbol in conjunction with the word ''brake'' (47 FR 31347). In 1986, NHTSA granted an Alfa Romeo, Inc. petition involving passenger vehicles which used the ISO symbol instead of the word ''brake'' (51 FR 36769). In 1994, NHTSA granted a Ford Motor Company petition involving passenger vehicles which similarly used the ISO symbol instead of the word ''brake'' (59 FR 40409).

The agency agrees with Kia this noncompliance will not have an adverse effect on vehicle safety. Due to the positioning, color, use of the ISO

symbol, and combined size of both the lettering and symbols, it is very unlikely that a vehicle user would either fail to see or fail to understand the meaning of the brake or ABS warning light in the affected vehicles. The information presented by the telltales is correct. Kia has not received any complaints regarding the size or visibility of either light. Kia has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Kia's petition is granted and the petitioner is exempted from the obligation of providing notification of and a remedy for the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: July 1, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–15562 Filed 7–7–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Life Safety Code grant component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus two completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office by 4 p.m. eastern time on August 17, 2004. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, *see* the Final Rule published in the **Federal Register** on September 26, 2003.

Submission of Application: An original completed and collated grant application (plus two copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, Florida 33617. Applications must be received in the Grant and Per Diem Field Office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program Field Office, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–100, Tampa, FL 33617 or phone (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible capital grantees who received a previous grant under section 3 of the Homeless Veterans Comprehensive Service Act of 1992 (Pub. L. 102–590; 38 U.S.C. 7721 note) for construction, renovation, or acquisition of a facility and may seek a Life Safety Code grant solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association.

Pub. L. 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, authorizes this program. Funding applied for under this Notice may be used solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Pub. L. 107–95, section 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. 2011, 2012, 2061, 2064 and has been extended through Fiscal Year 2005. The program is implemented by the final rule codified at 38 CFR 61.0. The final rule was published in the **Federal Register** on September 26, 2003. The regulations can be found in their entirety in 38 CFR Sec. 61.0 through 61.82. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation: Approximately $2 million is available for the Life Safety Code grant component of this program.

Funding Priorities: None.

Application Requirements: The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Selections will be made based on criteria described in the application.

Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: June 24, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–15484 Filed 7–7–04; 8:45 am]

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Federal Register

Thursday,
July 8, 2004

Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Approval and Promulgation of Implementation Plans; Ohio; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 159–1a; FRL–7774–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 27, 2003, Ohio requested revisions to the State Implementation Plan (SIP) for sulfur dioxide (SO_2) for several counties in Ohio, along with a request for redesignation of Cuyahoga County to attainment for SO_2. In general, the submitted rules are at least equivalent to limitations promulgated by EPA in a Federal Implementation Plan (FIP) for the area. Therefore, EPA is approving these revisions to the SIP. In conjunction with this action, EPA is rescinding the federally promulgated emission limitations for SO_2 for these counties. By this pair of actions, EPA is replacing FIP limits with SIP limits for the affected counties.

EPA finds Ohio's request for the redesignation of Cuyahoga County to attainment for SO_2 approvable. EPA believes that the prerequisites for redesignation to attainment are satisfied, including meeting the air quality standard, replacing FIP limits with federally approved state limits, providing an approvable plan for continued attainment, and addressing other relevant planning requirements. Therefore, EPA is redesignating Cuyahoga County to attainment for SO_2.

DATES: This direct final rule is effective on September 7, 2004, unless EPA receives an adverse written comment or a request for a public hearing by August 9, 2004. If EPA receives an adverse written comment or a request for a public hearing, EPA will publish a timely withdrawal of the rule in the **Federal Register** and will inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. OH159 by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

E-mail: *bortzer.jay@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

You may request a public hearing. Requests for a hearing should be submitted to J. Elmer Bortzer. Interested persons may call John Summerhays at (312) 886–6067 to learn if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

Instructions: Direct your comments to Docket ID No. OH159. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. ''For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.''

Docket: All documents in the docket are listed in an index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: John Summerhays at (312) 886–6067.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information.

A. Does This Action Apply To Me?

This action applies to industries that produce sulfur dioxide emissions.

B. What Should I Consider As I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

II. Background on Ohio SO_2

This rulemaking action principally addresses the nature of the federally enforceable emission limits for SO_2 in several Ohio counties. Specifically, this action establishes numerous State-adopted emission limits as federally enforceable, and in turn deletes the corresponding federally promulgated FIP limits.

In most cases, SIPs reflect regulations and related materials that have been prepared and adopted by the state and approved by EPA pursuant to section 110 of the Clean Air Act. However, in rare cases EPA uses authority, presently found in section 110(c) of the Clean Air Act, for federal promulgation of regulations and other plan elements required by the Clean Air Act. An important element of today's action is to approve numerous state adopted SO_2 regulations that will supersede the corresponding federally promulgated regulations.

The second action taken here is to redesignate the Cleveland area (Cuyahoga County) from a nonattainment area to an attainment area for SO_2. Among the prerequisites to redesignation is that EPA has approved State adopted rules sufficient to provide for attainment and to satisfy other planning requirements. Ohio's submittal and EPA's approval of State limits for Cuyahoga County for replacing FIP limits addresses this prerequisite.

The key antecedent to today's action was promulgation of a FIP, published on August 27, 1976, at 41 FR 36324, establishing SO_2 control regulations for 55 Ohio counties. EPA promulgated the FIP after Ohio submitted State Implementation Plans for SO_2 in 1972 and again in 1974 but withdrew these plans from consideration. Then, in 1980, Ohio submitted a comprehensive set of SO_2 limits for the State. EPA approved Ohio's limits for a majority of its counties on January 27, 1981, at 46 FR 8481. In that rulemaking, EPA explained that the approved State adopted rules superseded the corresponding FIP limits. EPA has undertaken similar rulemaking several times thereafter.

Nevertheless, in an assortment of cases, EPA did not approve the state-adopted SO_2 limits. For some counties, EPA approved most limits but did not act on limits for specific sources, for example because Ohio withdrew the limits from consideration due to a source's concern about the limit. For other counties, EPA did not approve any limits, for example because EPA identified deficiencies in the analysis underlying the limits. In the absence of an approved State limit, the FIP limit remained in effect as the federally enforceable limit.

Most of EPA's rulemakings concerning SO_2 in Ohio have approved State-adopted limits that superseded FIP limits without actually removing the FIP rule language from the Code of Federal Regulations. Actual removal of Ohio SO_2 FIP rule language has occurred on two prior occasions: June 29, 1995, at 60 FR 33915, and on January 31, 2002, at 67 FR 4669. The first of these involved no new approvals of State rules; instead, it involved removal of previously superseded FIP rules, as part of a broader package of actions to remove unnecessary language in the Code of Federal Regulations. The second previous elimination of FIP rules included approval of State rules for some or all of two counties with FIP rules, elimination of FIP rules for these counties, and elimination of FIP rules for portions of an additional three counties for which EPA had previously approved Ohio's rules. (This latter rulemaking also approved State rules for one county without corresponding FIP rules.) Today's rulemaking includes similar State rule approval and FIP removal as did this latter rulemaking.

Today's removal of FIP regulations is contingent on having enforceable superseding State regulations in effect. Today's rulemaking provides for Federal enforceability of superseding State regulations, and invalidation of these State regulations is unlikely because the period for legal challenge of these State regulations has passed without challenge. Nevertheless, if for any reason the State rules become invalidated or otherwise become unenforceable, EPA would view the FIP removal to be invalidated, and EPA would revert to enforcing the FIP regulations removed today.

III. Review of Rule Revisions

Today's rulemaking addresses SO_2 limits for the following counties: Adams, Allen, Clermont, Cuyahoga, Lake, Lawrence, Mahoning, Monroe, Montgomery, Muskingum, Pike, Ross, Washington, and Wood Counties. For Cuyahoga, Mahoning, Monroe, and Washington Counties, the submitted limits differ from the current federally enforceable limits. The first four subsections that follow address each of these counties individually. The fifth subsection addresses the counties in which the submitted limits are largely equivalent to current federally enforceable limits. A final subsection addresses revisions to generic rules with statewide applicability.

Criteria for this review are described in guidance issued from the Director of the Air Quality Management Division to the Director of Region 5's Air and Radiation Division on September 28, 1994. This memorandum recommended approving State rules in place of FIP rules if three criteria are met:

1. That the FIP demonstrated the limits were adequately protective at the time of promulgation.
2. There is no evidence now that the FIP and associated emission limits are inadequate to protect the SO_2 national ambient air quality standards.
3. This is not a relaxation of existing emission limits.

A. Cuyahoga County

Following promulgation of FIP limits in 1976, a lawsuit by Republic Steel Company led to extended re-analysis of Cuyahoga County's SO_2 limits, culminating in promulgation of a new set of limits on September 3, 1993, at 58 FR 46867. The preamble of that rulemaking describes the re-analysis in more detail. The control strategy analysis for Cuyahoga County included routine modeling, sufficient to address most sources in the county, plus substantial additional analysis for the steelmaking facility now owned by International Steel Group (ISG, formerly LTV Steel, which includes the merged properties of Republic Steel and J&L Steel). The additional analysis addressed the impacts of the combustion of undesulfurized coke oven gas and focused on two ''critical receptors'' identified in the initial modeling as the two locations most likely to have modeled violations.

A first step in this additional analysis was to estimate the concentrations at the two critical receptors that could arise with unlimited availability of undesulfurized coke oven gas. A second step was to address the impact of a limit on the availability of undesulfurized coke oven gas. Because the alternatives to undesulfurized coke oven gas (such as blast furnace gas and natural gas) have lower sulfur content, the restriction on coke oven gas production

(and therefore coke oven gas combustion) significantly reduces overall allowable SO_2 emissions. The challenge in this analysis was to identify and address the worst case distribution of the allowable undesulfurized coke oven gas resulting in the largest allowable impacts. For this purpose, the analysis first allocated coke oven gas to the emission point burning coke oven gas with the greatest impact per ton of emissions, then to the emissions point with the next greatest impact per ton of emissions, and so on, until the available coke oven gas was fully allocated. The analysis used a spreadsheet that identified the modeled impacts at the two critical receptors per ton of emissions and assessed the impacts of various distributions of undesulfurized coke oven gas. From this analysis, EPA concluded that the worst case distribution of the undesulfurized coke oven gas, in combination with source-specific emission limits, would yield concentrations below the SO_2 air quality standards.

Most of the Cuyahoga County limits that Ohio submitted in September 2003 are identical to the 1993 FIP limits. The differences between the 2003 State rules and the FIP for Cuyahoga County are of three types: (a) Limit revisions for ISG based on a combination of an increase in emissions allowed at the facility's C–1 blast furnace and the shutdown of the number 6 coke battery, (b) a special provision relating to the sulfur content of oil burned at the ISG facility, and (c) establishment of limits for sources that are not identified in the FIP.

Ohio's revised rule allows the ISG facility's C–1 blast furnace to increase emissions from 0.024 to 0.15 pounds per million British Thermal Units (#/MMBTU), corresponding to an increase in allowable emissions from 7.7 #/hour to 48.0 #/hour. Since most of the SO_2 emitted by the ISG facility arose from the combustion of undesulfurized coke oven gas produced by the number 6 and number 7 coke batteries, the shutdown of the number 6 battery yielded a reduction in SO_2 emissions and impacts that is much greater than the increase at the C–1 blast furnace.

The regulation submitted by Ohio requires 0.0 #/hour of SO_2 emissions from the ISG facility's number 6 battery. However, the regulation also continues to permit production of coke oven gas containing 265 of the prior 315 #/hour of hydrogen sulfide (H_2S). Based on the difference in molecular weights, combustion of 50 fewer pounds per hour of H_2S results in an SO_2 emission reduction of 94 #/hour.

Under one interpretation of Ohio's rules, ISG remains allowed to produce 265 pounds per hour of H_2S from the number 6 coke battery. Under this interpretation, if ISG in the future becomes subject to a restriction prohibiting some or all of this H_2S production, it may be possible for ISG to take a shutdown credit for new source permitting or other purposes for the implicit associated reduction in allowable SO_2 emissions. Under a second interpretation of Ohio's rules, the battery is already required to be shut down, and no further shutdown credits are available. (The battery is in fact shut down, but the difference between the two interpretations is whether the rules *require* the battery to be shut down.)

EPA is not choosing between these two interpretations today. That is, EPA is not rulemaking today on whether Ohio's rule requires shutdown of the ISG facility's number 6 battery (and thus termination of coke oven gas production) or whether credits would be granted in the future for eliminating the nominal allowance for producing (and combusting) coke oven gas containing 265 #/hour of H_2S. EPA is rulemaking only on the question of whether a conservative interpretation of Ohio's rules, reflecting a 50 #/hour reduction in allowable H_2S production in combination with a provision for no SO_2 emissions from the number 6 battery and a 40 #/hour increase in SO_2 emissions allowed at the C–1 blast furnace, provides at least as much air quality protection as the control strategy of the current FIP.

EPA is examining the air quality impact of these changes in allowable emissions using the attainment demonstration underlying the current FIP. Comparing the worst case scenario with 265 #/hour of H_2S production versus the worst case scenario with 315 #/hour of H_2S production, the difference is combustion of 50 fewer #/hour of H_2S. Both worst case scenarios would continue to reflect use of undesulfurized coke oven gas at the emission points with the highest impacts per ton of emissions. The difference between the two worst case scenarios would be the availability of 50 fewer #/hour of H_2S for combustion at the emission point with the lowest impact per ton ranking that is allocated undesulfurized coke oven gas in the worst case allocation. For both critical receptors, the net effect of one less pound of emissions from the affected emission point and one more pound of emissions from the C–1 blast furnace is a reduction of worst case concentrations. Therefore, EPA concludes that the net effect of this pair of rule changes is to reduce the modeled SO_2 concentration, even if Ohio's rule is interpreted to allow the ISG facility's number 6 battery to produce 265 #/hour of H_2S.

The second difference between Ohio's rule and the FIP involves the limit on sulfur content of oil combusted at the ISG facility. Ohio's rule provides that the sulfur content of oil combusted at the ISG facility shall be limited to 0.525 #/MMBTU of heat content on any day that the facility is burning coke oven gas. The FIP applies this limit to all days. Under Ohio's rule, for days when coke oven gas is not used (which, with the shutdown of the coke batteries at the ISG facility, is always the case), the oil sulfur content is limited by the Ohio rules' unit-specific limits applicable to units with the capacity to burn oil. For days without coke oven gas, even if the ISG facility uses sufficiently sulfur-laden oil to approach these limits for the few units that can burn oil, the absence of undesulfurized coke oven gas as a fuel will result in most units emitting far less than their limit and will clearly yield better air quality. Therefore, this provision on oil sulfur content provides adequate air quality protection.

A third difference between Ohio's rule and the FIP is the explicit inclusion in Ohio's rules of several sources that are not explicitly regulated in the FIP. The FIP establishes generic limits of 1.2 #/MMBTU for boilers and 6 #/ton of actual process weight input. Most of the sources listed in Ohio's rules that are not listed in the FIP have boilers, many of which have limits above 1.2 #/MMBTU. In the attainment demonstration justifying the FIP, these sources were included and modeled as having emissions corresponding to their State limit. Therefore, EPA is satisfied that these limits are an acceptable part of an overall plan that provides for attainment. More generally, EPA concludes that in spite of the differences between the State rule and the FIP, the State rules serve adequately in assuring attainment of the SO_2 standards in Cuyahoga County.

B. Mahoning County

As in Cuyahoga County, currently all federally enforceable SO_2 limits in Mahoning County reflect the federally promulgated limits of the FIP. Comparison of the State rules to the FIP is complicated by the numerous facility ownership changes that occurred between the time the FIP was promulgated and the time the State rules were first adopted. The comparison is simplified by the shutdown of numerous facilities. The following is a synopsis of this comparison for the four key remaining facilities that are addressed in the FIP:

Youngstown Thermal (previously Ohio Edison/North Avenue)—The State limit is rounded to a slightly tighter limit than the FIP limit.

Youngstown Sinter (limited in the FIP by the generic limit of 1.0 #/ton of process weight input)—The State seeks to raise the limit to 3.3 #/ton of process weight input.

Whitacre Greer—The State has raised the limit to equal the limit in the FIP.

Lonardo Greenhouse—State and FIP limits are identical.

Thus the principal issue in reviewing these limits is whether Ohio has justified the increased limit for the Youngstown Sinter Plant.

Ohio's justification for increasing the limit for the Youngstown Sinter Plant is based on the shutdown of a nearby U.S. Steel facility. Although the U.S. Steel facility is not identified in either the FIP or the State rules, the facility was included in the modeling analysis underlying the FIP. Ohio noted that the emission decrease from the shutdown of the U.S. Steel facility, which Ohio calculates as a reduction of 1703 tons per year of SO_2, is greater than the emissions increase at the Youngstown Sinter Plant, which Ohio calculates as allowing an increase of 1293 tons per year. Ohio further provided results of a modeling analysis addressing the net effects of the increase in the allowable emissions from the Youngstown Sinter Plant and the shutdown of the U.S. Steel facility. This analysis was conducted in accordance with the Emission Trading Policy Statement published by EPA on December 4, 1986, at 51 FR 43814. Since the area includes some complex terrain, the analysis used both the ISCST3 model and the CTSCREEN model to assess the impact of the emission changes inherent in this revision and the shutdown of the U.S. Steel facility. This analysis showed that selected receptors more influenced by the Youngstown Sinter Plant would have a net concentration increase but that these increases were small. Specifically, the analysis indicated that at all receptors, the limit revisions would yield either a decrease in concentrations or an increase by an amount smaller than the levels defined in the Emission Trading Policy Statement as significant. Further, this pair of sources are somewhat distant from other sources (and former sources) in Mahoning County, suggesting that concentrations from other sources, to which this net impact is added, are relatively low. Therefore, EPA concludes that the revised limit for the Youngstown Sinter Plant continues to provide for attainment.

C. Monroe County

The Ormet facility was addressed in an attainment plan developed for the Ohio Power Kammer Plant in neighboring Marshall County, West Virginia. EPA approved the attainment plan and the associated West Virginia limits on August 2, 2000, at 65 FR 47339. That rulemaking notice provides a complete discussion of the CALPUFF modeling conducted to define the necessary limits and the other elements of the attainment plan. This attainment plan indicated the need for Ohio to reduce the limits for the Ormet facility below the generic limits that are currently federally enforceable (reflecting a State-wide formula establishing an emission limit based on process weight rate), though the limits did not need to be reduced below actual current Ormet emission rates. EPA concludes that these revised limits, in combination with the approved West Virginia limits, provide for attainment in the area.

D. Washington County

Ohio submitted rules for Washington County that reduced the emission limit for American Municipal Power's Gorsuch Generating Station from 9.5 #/MMBTU to 4.5 #/MMBTU. Ohio explained that this limit was necessitated by modeling during new source permitting of another source that showed this limit reduction to be needed to assure attainment in the area. Ohio did not submit this modeling as part of its submittal. Nevertheless, this limit reduction clearly improves air quality protection. Therefore, EPA approves this revision.

E. Additional Counties

In the 1980s, although Ohio submitted regulations applicable to most sources in the State, Ohio withdrew or did not submit limits for numerous sources. Consequently, the federally enforceable limits for numerous sources are FIP limits. In addition, in a few cases, a source is subject to no federally enforceable limits because Ohio withdrew or did not submit limits for sources that lacked applicable FIP limits. Ohio's submittal of September 27, 2003, addresses this situation by submitting rules for many of these sources. This submittal includes limits for Adams County (Dayton Power & Light-Stuart Station), Allen County (Marsulex), Clermont County (Cincinnati Gas & Electric-Beckjord Station), Lawrence County (Allied Chemical), Montgomery County (Glatfelter and Miami Paper), Muskingum County (AK Steel), Pike County (Portsmouth Diffusion Plant), Ross County (Mead), and Wood County (Libby-Owens-Ford Plants 4 & 8 and Plant 6). In addition, Ohio submitted revised rules for Lake County (Lubrizol) and Muskingum County (Armco Steel). The following is a brief synopsis of these limits:

Adams County—The limit for Dayton Power & Light-Stuart Station is equivalent to the current FIP limit.

Allen County—No FIP limits apply. Approval of these limits provides for a complete set of limits for Allen County.

Clermont County—The FIP subjects the Cincinnati Gas & Electric-Beckjord Station to either a plant-wide limit of 2.02 #/MMBTU or an equivalent set of equations addressing use of multiple coal supplies at different stacks. Ohio's limits for this source reflect two coal supplies and satisfy the equation version of the FIP requirements. Thus, the State limits are equivalent to the FIP limits.

Lake County—Ohio revised these regulations for one source, the Lubrizol facility, most notably to have its regulations match the contents of the Findings and Orders issued by the State to this facility. EPA approved the Findings and Orders on June 12, 2001, at 66 FR 31552. The revised regulation also identifies the limits resulting from Ohio's generic limitation for several emissions points that did not previously have explicit emission limits. Since all of these limits are equivalent to currently federally enforceable limits, EPA finds these revisions approvable.

Lawrence County—The State limit is slightly tighter than the FIP limit.

Montgomery County—The State limits for the Glatfelter and Miami Paper facilities are equivalent to the generic Montgomery County FIP limit to which these sources are currently subject.

Muskingum County—For Armco Steel Corporation (now known as AK Steel), Ohio retained the previously approved emission limit but removed a limit on hours of operation that was not necessary to provide for attainment.

Pike County—The State limit for the Portsmouth Diffusion Plant is equivalent to the FIP limit.

Ross County—The State limit for recovery furnaces at the Mead facility are equivalent to the FIP limit. The FIP limit for boilers at this source is 0.00 #/MMBTU, based on anticipation that these boilers would shut down; however, the boilers did not in fact shut down. The State limit reflects the emissions for these boilers included in the FIP attainment demonstration.

Wood County—The State limits for Libby-Owens-Ford Plants 4 & 8 and Plant 6 are equivalent to the generic

Wood County FIP limit to which these sources are currently subject.

EPA has reviewed these rules, finds their limits to be at least equivalent to the limits in the FIP, and finds that the attainment demonstration that yielded these limits remains a valid basis for approving these limits.

F. Additional Rule Revisions

In addition to the revisions of source limits, Ohio adopted and submitted selected revisions to its general sulfur dioxide rules. The following paragraphs describe and review these revisions.

Rule 3745–18–01, entitled ''Definitions and incorporation by reference,'' is changed by adding a definition of natural gas and by adding a list of materials incorporated by reference into the rule, principally consisting of test methods. These revisions are approvable.

For Rule 3745–18–04, Ohio specifically requests rulemaking on paragraphs (F) and (J). Paragraph (F)(4) provides that sources that are burning natural gas may be considered to have zero SO_2 emissions. The revision removes the specific criteria of heat content and sulfur content, recognizing that natural gas uniformly has low sulfur content and so such criteria are not needed to assure that sources burning natural gas will have minimal SO_2 emissions. Paragraph (J) provides for test methods for the Lubrizol facility in Lake County, including the continuous emission monitoring that is needed to address compliance with the interconnected array of limits in effect at this facility. EPA finds the revised rules equally as protective as the prior provisions.

Rule 3745–18–06 provides that sources burning only natural gas are exempt from the limits of Chapter 3745–18, insofar as emissions are certain to be below applicable limits. The revision again removes the specific criteria of heat content and sulfur content, instead relying on the definition of natural gas in Rule 3745–18–01(B)(9). EPA finds that these criteria are not needed to assure minimal SO_2 from combustion of natural gas.

IV. Review of Redesignation Request for Cuyahoga County

Section 107(d)(3)(E) of the Clean Air Act identifies five criteria for redesignating areas from nonattainment to attainment. The following addresses these criteria in turn:

Section 107(d)(3)(E)(i) makes redesignation contingent on EPA determining that the area is attaining the applicable standard. The available monitoring data indicate that Cuyahoga County is attaining the SO_2 standards. In addition, Ohio submitted evidence that Cuyahoga County sources are complying with applicable emission limits, which indicates that modeling using the same meteorological data as the attainment demonstration but using actual emissions data would also show attainment. For these reasons, EPA concludes that Cuyahoga County is attaining the SO_2 air quality standard.

Section 107(d)(3)(E)(ii) requires that Ohio have addressed all applicable planning requirements. This rulemaking, approving state rules to replace the FIP rules that previously addressed applicable requirements, provides that Ohio has now addressed all applicable planning requirements.

Section 107(d)(3)(E)(iii) requires that the air quality improvement leading to attainment be the result of permanent and enforceable emission reductions. Attainment in Cuyahoga County was the result of a combination of switches to lower sulfur fuel and installation of control equipment necessitated by applicable permanent and enforceable emission limits.

Section 107(d)(3)(E)(iv) requires a maintenance plan assuring continued attainment. Ohio's submittal of September 27, 2003, includes a maintenance plan. The core of this maintenance plan is the emission limits for key sources in Cuyahoga County, which provide for attainment even if these sources operate at full capacity emitting at their full allowable levels. The only additional condition for assuring maintenance is to assure that background concentrations remain at or below current levels. Ohio's maintenance plan reflects existing federal measures, including the acid rain program and rules that require lower sulfur fuels for gasoline-fueled and diesel-fueled vehicles. Both the emission reductions in recent years from the acid rain program and the reductions in motor vehicle SO_2 emissions expected in the next few years will assure that background SO_2 concentrations will remain below levels defined in the 1980s for attainment planning purposes. Therefore, Ohio's maintenance plan assures continued attainment of the SO_2 standards for the foreseeable future.

Section 107(d)(3)(E)(v) requires that the State has met all planning requirements for the area under Clean Air Act Section 110 and Part D of Title I. With this submittal and the rules therein, Ohio now satisfies all requirements for SO_2 in Cuyahoga County under Section 110 and Part D of Title I. Thus, all five prerequisites for redesignation Cuyahoga County to attainment for SO_2 have been satisfied.

V. EPA Action

This rulemaking approves numerous SO_2 limits adopted and submitted by Ohio to replace limits that EPA promulgated as part of a FIP. EPA is approving rules for Adams County (limits for Dayton Power & Light-Stuart Station), Allen County (limits for the Marsulex facility), Clermont County (limits for Cincinnati Gas & Electric-Beckjord Station), Cuyahoga County (full rule), Lake County (full rule), Lawrence County (limits for the Allied Chemical facility), Mahoning County (full rule), Monroe County (full rule), Montgomery County (limits for the Glatfelter and Miami Paper facilities), Muskingum County (Armco Steel), Pike County (limits for the Portsmouth Diffusion Plant), Ross County (limits for the Mead facility), Washington County (full rule), and Wood County (Libby-Owens-Ford Plants 4 & 8 and Plant 6).

In those cases where the affected plants are subject to FIP limits, the approved State rules supersede the FIP limits. In today's action, EPA is removing the FIP rules that have thus been superseded.

EPA is redesignating Cuyahoga County to attainment for SO_2. EPA is also approving Ohio's plan for maintenance of the SO_2 air quality standard in Cuyahoga County.

In the proposed rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted plan revision. If we receive adverse comments by August 9, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final rule will not take effect, and we will address the comments in a subsequent final rule based on the proposal. If we do not receive timely adverse comments, the direct final rule will be effective without further notice on September 7, 2004. This will incorporate these rules into the federally enforceable SIP. Any parties interested in commenting must do so at this time.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must

approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because this action does not create any new requirements but simply approves requirements that the State is already imposing, the Paperwork Reduction Act does not apply to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because approvals of preexisting state rules under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Because this rule merely approves a state rule implementing a Federal standard and imposes no new requirements, it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act

(NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 7, 2004, unless EPA receives adverse written comments by August 9, 2004.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 10, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(129) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(129) On September 27, 2003, the Ohio Environmental Protection agency submitted revised rules for sulfur dioxide. The submittal includes revised provisions in Rules 3745–18–01, 3745–18–04, and 3745–18–06, relating to natural gas use, as well as special provisions in Rule 3745–18–04 for compliance testing for Lubrizol in Lake County. The submittal includes recently revised limits Ohio in Cuyahoga, Lake, Mahoning, Monroe, and Washington Counties, as well as previously adopted source-specific limits in Adams, Allen, Clermont, Lawrence, Montgomery, Muskingum, Pike, Ross, and Wood Counties that had not previously been subject to EPA rulemaking.

(i) Incorporation by reference.

(A) Rules OAC 3745–18–01; OAC 3745–18–04(F); OAC 3745–18–04(J); OAC 3745–18–06; OAC 3745–18–24; OAC 3745–18–49; OAC 3745–18–56; OAC 3745–18–62; and OAC 3745–18–90. Adopted August 19, 2003, effective September 1, 2003.

(B) Rules OAC 3745–18–07(B); OAC 3745–18–08(H); OAC 3745–18–19(B); OAC 3745–18–66(C); OAC 3745–18–72(B);, effective May 11, 1987.

(C) OAC 3745–18–50(C); OAC 3745–18–77(B); effective December 28, 1979.

(D) OAC 3745–18–63 (K) and (L); and OAC 3745–18–93 (B) and (C); effective November 1, 1984.

(ii) Additional material—Letter from Robert Hodanbosi to Thomas Skinner dated September 27, 2003.

■ 3. Section 52.1881 is amended by revising paragraphs (a)(4) and (a)(8) and adding paragraph (a)(15) to read as follows:

§ 52.1881 Control strategy: Sulfur Oxides (sulfur dioxide).

(a) * * *

(4) Approval-EPA approves the sulfur dioxide emission limits for the following counties: Adams County, Allen County, Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Butler County, Carroll County, Champaign County, Clark County, Clermont County, Clinton County, Columbiana County, Coshocton County, Crawford County, Cuyahoga County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County, Lawrence County, Licking County, Logan County, Lorain County, Lucas County, Madison County, Mahoning County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Montgomery County, Morgan County, Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County, Portage County, Preble County, Putnam County, Richland County, Ross County, Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County, Wayne County, Williams County, Wood County, and Wyandot County.

* * * * *

(8) No Action-EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Franklin County, Sandusky County (Martin Marietta Chemicals), and Stark County.

* * * * *

(15) On September 27, 2003, Ohio submitted maintenance plans for sulfur dioxide in Cuyahoga County and Lucas County.

* * * * *

■ 3. Section 52.1881 is further amended by removing paragraphs (b)(7) through (b)(15), redesignating paragraph (b)(16) (Franklin County) as (b)(7), removing paragraphs (b)(17) through (b)(25), redesignating paragraphs (b)(26) (Sandusky County), (b)(27) (Stark County) and (b)(28) (Summit County) as

(b)(8), (b)(9), and (b)(10), respectively, and removing paragraphs (b)(29) and (b)(30).

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.336 is amended by revising the entry for ''Cuyahoga County'' in the sulfur dioxide table to read as follows:

§ 81.336 Ohio.

OHIO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Cuyahoga County				X
* * *	*	*	*	*

* * * * *

[FR Doc. 04–15202 Filed 7–7–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 159–1b; FRL–7775–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 27, 2003, Ohio submitted proposed revisions to the State Implementation Plan (SIP) for sulfur dioxide (SO_2) for several counties in Ohio, along with a request for redesignation of Cuyahoga County to attainment for SO_2. In general, the submitted rules are at least equivalent to limitations originally promulgated by EPA in a Federal Implementation Plan (FIP) for the area. Therefore, EPA proposes to approve these revisions to the SIP. In conjunction with this action, EPA proposes to rescind the federally promulgated emission limitations for SO_2 for these counties.

EPA also proposes to redesignate Cuyahoga County to attainment for SO_2. In association with this proposal, EPA proposes to approve Ohio's plan for continuing to attain the SO_2 standard in Cuyahoga County.

DATES: Comments or a request for a public hearing on this proposed rule must arrive on or before August 9, 2004.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically, or through hand delivery/courier. Commenters are advised to review the information and follow the instructions for submitting comments as described in Part (I)(B) of the **SUPPLEMENTARY INFORMATION** section of the companion direct final rule published in the rules section of this **Federal Register**.

Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: John Summerhays at (312) 886–6067.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, we are approving this revision in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–15203 Filed 7–7–04; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
July 8, 2004

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Stationary Gas Turbines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2002–0053, FRL–7780–6]

RIN 2060–AK35

Standards of Performance for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: This action promulgates amendments to several sections of the standards of performance for stationary gas turbines in 40 CFR part 60, subpart GG. The amendments will codify several alternative testing and monitoring procedures that have routinely been approved by EPA. The amendments will also reflect changes in nitrogen oxides (NO_X) emission control technologies and turbine design since the standards were promulgated.

DATES: The final rule is effective July 8, 2004. The incorporation by reference of certain publications in the final rule is approved by the Director of the Office of the Federal Register as of July 8, 2004.

ADDRESSES: *Docket.* The EPA has established a docket for this action under Docket ID No. OAR–2002–0053. All documents in the docket are listed in EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC 20460. The public reading room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagan, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; electronic mail address *pagan.jaime@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action are those that own and operate stationary gas turbines, and are the same as the existing rule in 40 CFR part 60, subpart GG. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the final rule.	2211	4911	Electric services.
	486210	4922	Natural gas transmission.
	211111	1311	Crude petroleum and natural gas.
	211112	1321	Natural gas liquids.
	221	4931	Electric and other services, combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 60.330 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0053. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility located above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the promulgated final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 7, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

Background Information Document. During the comment period, EPA received 23 comment letters on the proposal and direct final rule. A background information document (BID) (''Response to Public Comments on Proposed Standards of Performance for Stationary Gas Turbines,'') containing

EPA's responses to each public comment is available in Docket ID No. OAR–2002–0053.

Outline. The information presented in this preamble is organized as follows:

I. Background

Under section 111 of the CAA, 42 U.S.C. 7411, the EPA promulgated standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). The standards were promulgated on September 10, 1979 (44 FR 52798). Since that time, many advances in the design of the NO_X emission controls used in gas turbines have occurred. Additional test methods have also been developed to measure emissions from gas turbines and the sulfur content of gaseous fuels. As a result of these advances, we have had many requests for case-by-case approvals of alternative testing and monitoring procedures for subpart GG. We are promulgating the amendments to subpart GG to codify the alternatives that have been routinely approved. Additionally, we are attempting to harmonize, where appropriate, the provisions of subpart GG with the monitoring provisions of 40 CFR part 75, the continuous emission monitoring requirements of the acid rain program under title IV of the CAA, since many existing and new gas turbines are subject to both regulations.

On April 14, 2003, we published a direct final rule (68 FR 17990) and a parallel proposal (68 FR 18003) amending the standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). We stated in the preambles to the direct final rule and parallel proposal that if we received adverse comments on one or more distinct provisions of the direct final rule, we would publish a timely withdrawal of those distinct provisions in the **Federal Register**. The preamble to the direct final rule stated that the deadline for submitting public comments was May 14, 2003, and the effective date of the provisions would be May 29, 2003. The preamble to the proposal also stated that if a public hearing was requested by April 24, 2003, the hearing would be held on May 14, 2003, and the comment period would be extended until 30 days after the date of the public hearing. Since a public hearing was requested, the comment period was extended until June 13, 2003. The entire direct final rule was withdrawn in order to avoid the direct final rule becoming effective before all public comments were received.

II. Discussion of Revisions

A. Continuous Monitoring Options

Under the original provisions of subpart GG, 40 CFR part 60, any affected unit with a water injection system was required to install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water to fuel being fired in the turbine. These operating parameters demonstrate that a turbine continues to operate under the same performance conditions as those documented during the initial and any subsequent compliance tests, thus providing reasonable assurance of compliance with the NO_X standard. We are amending the regulation to allow the use of NO_X continuous emission monitoring systems (CEMS) to demonstrate compliance, as detailed in the following paragraphs.

Owners or operators of turbines that commenced construction, reconstruction, or modification after October 3, 1977, but before July 8, 2004, and that use water or steam injection to control NO_X emissions can continue to use the NO_X monitoring system which is currently being used, or may elect to use a NO_X CEMS. The CEMS must be installed, operated, and maintained according to the appropriate performance specification requirements in 40 CFR part 60, appendix B. Alternatively, sources may choose to use data from a NO_X CEMS that is certified according to the requirements of 40 CFR part 75. Any owners or operators of turbines constructed, reconstructed, or modified in this time period that do not use water or steam injection and that have received EPA or local permitting authority approval of an alternative monitoring strategy can continue to follow the conditions of the petition approval.

For new turbines constructed after July 8, 2004, and using water or steam injection for NO_X control, owners/operators can elect to use either the existing requirements for continuous water or steam to fuel ratio monitoring or may elect to use a CEMS to monitor NO_X. The CEMS must be installed and certified according to Performance Specifications (PS) 2 and 3 of 40 CFR part 60, appendix B. Alternatively, sources may choose to use data from a NO_X CEMS that is certified according to the requirements of 40 CFR part 75, appendix A.

Owners or operators of new turbines that commence construction after July 8, 2004, and do not use water or steam injection to control NO_X emissions can use a NO_X CEMS as an alternative to continuously monitoring fuel consumption and water or steam to fuel ratio, provided the CEMS is installed and certified according to PS 2 and 3 of 40 CFR part 60, appendix B and 40 CFR 60.13 or the requirements of 40 CFR part 75, appendix A. An acceptable alternative to installation of a NO_X CEMS is continuous parameter monitoring. If this option is chosen, owners or operators of uncontrolled diffusion flame turbines must continuously monitor at least four parameters indicative of the unit's NO_X formation characteristics. For lean premix turbines, continuous monitoring of parameters that indicate whether the turbine is operating in the lean premixed combustion mode is required. Examples of these parameters may include percentage of full load, turbine exhaust temperature, combustion reference temperature, compressor discharge pressure, fuel and air valve positions, dynamic pressure pulsations, internal guide vane position, and flame detection or flame scanner conditions. Definitions for diffusion flame turbine

and lean premix turbine consistent with those in the combustion turbine final rule have been added to the definitions section of the final rule. Parameters that indicate proper operation of the emission control device must be monitored for turbines that use selective catalytic reduction. In all cases, the acceptable values and ranges for the parameters must be established during the initial performance test for the turbine and recorded in a parameter monitoring plan, to be kept on-site.

If the option to use a NO_X CEMS is chosen, we have specified the minimum data requirements. For full operating hours, each monitor must complete at least one cycle of operation (including sampling, analyzing, and data recording) for each 15-minute quadrant of the hour. For partial unit operating hours, one valid data point must be obtained for each quadrant of the hour for which the unit is operating. A minimum of two valid data points in two different 15-minute quadrants are required for hours in which required quality assurance and maintenance activities are performed on the CEMS. This data must be reduced to hourly averages for purposes of identifying excess emissions. The data acquisition and handling system must record the hourly NO_X emissions as well as the International Organization for Standardization (ISO) standard conditions (if applicable).

In lieu of recording the ISO standard conditions, a worst case ISO correction factor can be calculated using historical ambient data. For the purpose of this calculation, substitute the maximum humidity of ambient air (H_o), minimum ambient temperature (T_a), and minimum combustor inlet absolute pressure (P_o) into the ISO correction equation. By using worst case parameters in this equation, the owner/operator can ensure compliance in all situations without having to continuously monitor temperature, humidity and pressure. Several case-by-case determinations performed by EPA have accepted this methodology as an alternative to continuous monitoring of atmospheric conditions.

No NO_X or oxygen (O_2) CEMS data generated using the missing data substitution procedures in 40 CFR part 75 may be used to demonstrate compliance with the subpart GG, 40 CFR part 60, emission limits. Instead, these periods of missing data are counted as monitor downtime in the excess emissions and monitoring report required under 40 CFR 60.7(c). For turbines using NO_X CEMS, we have defined excess emissions as any unit operating hour during which the 4-hour rolling average NO_X concentration exceeds the applicable emission limit.

The 4-hour averaging period for defining excess emissions approximates the amount of time typically required to conduct a performance test of a combustion turbine using EPA Method 20. The 4-hour averaging period is relatively short compared to 24-hour and 30-day averaging times used for other types of combustion devices (*e.g.,* boilers). However, for these other combustion units, a longer averaging period is generally needed to account for variability in the NO_X emissions, particularly when solid fuels are fired. Combustion turbines typically use natural gas or diesel, which both have relatively uniform predictable NO_X emissions. Therefore, a shorter averaging time such as 4 hours is considered adequate to assess compliance. An averaging time of 1 hour was also considered, but was rejected since 4 hours more closely represents the typical duration of a combustion turbine stack test and will account for any minor temporal variation in the NO_X emissions.

To determine the 4-hour rolling averages, each period of 4 consecutive unit operating hours is assessed (*i.e.*, the current unit operating hour and the 3 unit operating hours immediately preceding it).

We are allowing the use of NO_X CEMS as an alternative to continuously monitoring fuel consumption and water or steam to fuel ratio because the majority of new turbines do not rely on water injection for NO_X control. Therefore, for those turbines, the monitoring originally required by subpart GG, 40 CFR part 60, is not appropriate. The use of a NO_X CEMS will show compliance with the NO_X standard of subpart GG over all operating ranges. Additionally, many of the units affected by subpart GG are already required to install and certify CEMS for NO_X under other requirements, such as the acid rain monitoring regulation in 40 CFR part 75, or through conditions in various permit requirements. To reduce the burden on these units, we are allowing the use of CEMS units that are certified according to the requirements of 40 CFR part 75. The 40 CFR part 75 testing procedures to certify the CEMS are nearly identical to those in 40 CFR part 60, and 40 CFR part 75 has rigorous quality assurance and quality control standards. Therefore, it is appropriate to allow the use of 40 CFR part 75 CEMS data for subpart GG compliance demonstration. A definition of unit operating hour, which includes the concepts of full and partial operating hours, is needed to clarify how to validate an hour when using CEMS and for the purpose of defining excess emissions and periods of monitor downtime.

B. Optional Fuel-Bound Nitrogen Allowance

The NO_X emission standard in 40 CFR 60.332 includes a NO_X emission allowance for fuel-bound nitrogen. The use of this allowance for fuel-bound nitrogen will be optional upon July 8, 2004. Owners or operators will be able to choose to accept a value of zero for the NO_X emission allowance. The NO_X emission limitations in many State permits are much more stringent than those of subpart GG of 40 CFR part 60. Many turbines are required by their permits to be fired only with pipeline quality natural gas, which is almost free of fuel-bound nitrogen. Therefore, these facilities are not likely to use the fuel-bound nitrogen credit.

C. Frequency of Fuel Nitrogen and Sulfur Content Sampling

Several revisions to the sampling frequency requirements for fuel nitrogen content and fuel sulfur content are being made.

Nitrogen Content for Turbines That Do Not Claim the Allowance for Fuel Bound Nitrogen

We are amending subpart GG of 40 CFR part 60 so that sources are required to monitor the nitrogen content of the fuel being fired in the turbine only if they claim the allowance for fuel-bound nitrogen. For sources that do not seek to use the fuel-bound nitrogen credit, sampling to determine the daily fuel nitrogen concentrations is not required.

Nitrogen and Sulfur Content for Turbines Firing Fuel Oil

The sampling frequency for determining the nitrogen and sulfur content of fuel oil has been amended. Previously for bulk storage fuels, sampling and analysis was required each time new fuel was added. The requirement to sample the nitrogen and sulfur content of the fuel each time fuel is transferred to the storage tank from any other source can be burdensome for a facility if there are one or more large bulk storage tanks which are filled by tanker trucks or isolated from the turbines during the filling process. If the fuel is not fed to the turbines during the filling process, no environmental benefit is gained by sampling every time oil is added from a tanker truck. Similarly, no environmental benefit is gained by sampling a tank which remains isolated from feeding turbines until it is filled. It is less burdensome to allow a tank to

be filled completely, regardless of how many tanker trucks it takes, and then drawing a sample of the combined fuel. In the end, this mixture of fuel is what will be fed to the turbines. Thus, we are eliminating the requirement to sample each time new fuel is added and are allowing the use of any of the four sampling options from 40 CFR part 75, appendix D. The four options are as follows: daily sampling, flow proportional sampling, sampling from a unit's storage tank, or sampling each delivery.

Sulfur Content for Turbines Firing Natural Gas

A definition for natural gas has been added to the definitions section. It is consistent with the latest definition in 40 CFR part 72. Owners and operators of turbines that are combusting natural gas are now provided with alternatives to demonstrate that the fuel meets the sulfur content requirement. Sulfur sampling is unnecessary for fuels that qualify as natural gas. As defined in the final rule, natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet, which equates to about 0.068 weight percent sulfur, or 680 parts per million by weight (ppmw), or 338 parts per million by volume (ppmv) at 20 degrees Celsius. (The conversion factor from grains of total sulfur per 100 standard cubic foot (gr/scf) to ppmw and percent weight: multiply gr/scf by 3.4×10^3 to get ppmw; divide this product by 10^4 to get percent weight.) When natural gas is combusted, there is no possibility of exceeding the subpart GG, 40 CFR part 60, sulfur limit of 0.8 weight percent or 8000 ppmw.

Sulfur and Nitrogen Content for Turbines Firing Gaseous Fuels Other Than Natural Gas

Units that fire a gaseous fuel that is supplied without intermediate bulk storage, but is not natural gas, must determine and record the sulfur content and (if applicable) nitrogen content once per day. Alternatively, these units may follow one of two custom sulfur sampling schedules outlined in the final rule, or they may develop a custom schedule that is approved by the EPA Administrator. One custom schedule requires daily sampling for 30 consecutive unit operating days. Provided the data indicate compliance, the frequency can then be reduced according to specific criteria. Unit operating day is now defined in 40 CFR 60.331.

Units may also follow a custom schedule based on the 720-hour sulfur sampling demonstration described in 40 CFR part 75, appendix D. Under both schedules, if the margin of compliance is large, the sampling frequency can eventually be reduced to annual. We are codifying these two custom schedules that have routinely been approved under the subpart GG provision that allows sources to develop custom schedules for fuel sampling that must be approved by the EPA Administrator.

D. Steam Injection

Sources that are using water injection currently can monitor the ratio of water to fuel, as well as fuel consumption, to demonstrate compliance with the NO_X standard. We are allowing sources that are using steam injection to monitor the ratio of steam to fuel and fuel consumption to demonstrate compliance. Steam injection is another method of NO_X control, and water and steam injection are the wet methods usually used. Steam injection monitoring is an acceptable type of parametric emission monitoring method.

E. Test Methods for Sulfur Content and Nitrogen Content of Fuel

When subpart GG of 40 CFR part 60 was promulgated, no test methods were specified for monitoring the nitrogen content of the fuel. We are specifying American Society of Testing and Materials (ASTM) D2597–94 (1999), ASTM D6366–99, ASTM D4629–02, or ASTM D5762–02 as acceptable methods for liquid fuels. Under the National Technology Transfer and Advancement Act, we have identified these voluntary consensus standards and are citing them for use. We are not adding any methods for determining the fuel-bound nitrogen content of the fuel being fired for gaseous fuels because none were identified. We do not expect any source owner to use a gaseous fuel with sufficient fuel-bound nitrogen present to claim a credit. Any source owner proposing credit for fuel-bound nitrogen in a gaseous fuel will have to document an acceptable method. We have amended subpart GG to allow the use of most of the methods specified in sections 2.2.5 and 2.3.3.1.2 of 40 CFR part 75, appendix D to determine the total sulfur content of gaseous fuel. The alternative methods for total sulfur provide more flexibility and harmonize with the requirements in 40 CFR part 75. The method ASTM D3031–81 has been deleted from the final rule because it was discontinued by the ASTM in 1990 with no replacement. If the total sulfur content of the fuel being fired in the turbine is less than 0.4 weight percent, we are adding a provision that the following methods may be used to measure the sulfur content of the fuel: ASTM D4084–82 or 94, D5504–01, D6228–98, or the Gas Processors Association Method 2377–86. This provision is consistent with the provision in 40 CFR 60.13(j)(1) allowing alternatives to reference method tests to determine relative accuracy of CEMS for sources with emission rates demonstrated to be less than 50 percent of the applicable standard.

F. Performance Testing

To measure the NO_X and diluent concentration during the performance test, we are adding EPA Method 7E of 40 CFR part 60, appendix A, used in conjunction with EPA Method 3 or 3A of 40 CFR part 60, appendix A, as an acceptable alternative to EPA Method 20. In addition, we are adding ASTM D6522–00 as another alternative to EPA Method 20.

Subpart GG of 40 CFR part 60 previously required the NO_X initial compliance testing to be conducted at four different loads across the unit's operating range. This testing was required because of the difficulty in predicting which operating load will represent worst case conditions when monitoring operational data. Testing, therefore, was done across the operating range to determine the water to fuel ratio and fuel consumption needed to maintain NO_X compliance across the unit's normal operating range. One of the tests was required to be conducted at 100 percent of peak load. We are amending the final rule to allow one test point at 90 to 100 percent of peak load, or the highest load physically achievable in practice. Due to conditions that are beyond the control of the turbine operator, such as ambient conditions, it is often not possible for a turbine to be operated at 100 percent of the manufacturer's design capacity. Therefore, the requirement to test at 100 percent of peak load has been made more flexible.

Another change is that the initial performance test can be performed only at 90 to 100 percent of peak load or the highest physically achievable load in practice, instead of at four different loads, if the owner or operator chooses to use the NO_X CEMS monitoring option. The NO_X CEMS will provide realtime data on NO_X emissions for any given time of operation. This data provides credible evidence which can be used to determine the unit's compliance status on a continuous basis following the initial test. The availability of this continuous information through the use of NO_X CEMS after the initial performance testing justifies testing at a single load

for the initial compliance testing. We are also clarifying how data collected during a relative accuracy test audit (RATA) of the NO_X CEMS may be used to demonstrate compliance with the performance tests required by 40 CFR 60.8. The RATA consists of a minimum of nine 21-minute runs using EPA reference test methods, for a total of 189 minutes or just over 3 hours. This amount of sampling accompanied by sampling at multiple traverse points during a RATA provides enough representative emissions data to determine the unit's compliance status.

Finally, a statement has been added to clarify that if the turbine combusts both oil and gas, separate performance testing is required for each type of fuel combusted by the turbine, except for emergency fuel. This is appropriate due to the fact that NO_X emissions vary by fuel type.

G. Measurement After Duct Burner

For sources that are combined cycle turbine systems using supplemental heat, we have added an option that the turbine NO_X emissions may be measured after the duct burner rather than directly after the turbine. No additional NO_X allowance is given. A definition for duct burner has also been added to the definitions section of the final rule. For combined cycle units, there are several concerns with testing and monitoring NO_X at the turbine outlet. For example, it is questionable whether the turbine outlet location is suitable for installation of CEMS. Moreover, due to the high temperature and pressure of the turbine exhaust at that location, it may be difficult to conduct an EPA Method 20 performance test at the turbine outlet of a combined cycle unit. In addition, any combined cycle units that are subject to NO_X CEMS requirements for 40 CFR part 75 or subparts Da and Db of 40 CFR part 60 will most likely have installed the CEMS after the duct burner, on the heat recovery steam generator (HRSG) stack. Another reason to allow measurement of NO_X emissions after the duct burner is that add-on NO_X control systems such as selective catalytic reduction (SCR) are generally located after the duct burner; turbine NO_X performance testing should be conducted after the NO_X control device and would, therefore, include emissions from the duct burner.

H. Option To Not Use International Organization for Standardization (ISO) Correction

We have added an option to not use the ISO correction equation for the following units: Lean premix combustor turbines, units used in association with HRSG equipped with duct burners, and units with add-on emission controls. This option was added based on discussions with the Gas Turbine Association (GTA). The GTA indicated in letters to EPA on April 16, 2002 and May 30, 2002 that the ISO correction equation was not necessary for these units. These letters can be found in the docket. In addition, in response to public comments, we are not requiring the reporting of ambient conditions if you are not using the ISO correction factor.

I. Accuracy of Continuous Monitoring System (CMS) for Fuel Consumption and the Water or Steam to Fuel Ratio

The requirement that the CMS for the fuel consumption and water or steam to fuel ratio for the turbine be accurate to within 5 percent has been removed. The numerical value of water to fuel ratio that serves as a surrogate for the acceptable NO_X concentration is established at each facility. This is accomplished by simultaneously measuring the NO_X concentration and using a CMS to monitor the water or steam to fuel ratio that achieves that NO_X level at various turbine loads at the specific facility during a performance test. This calibration serves to assure that if the water or steam to fuel ratio is maintained above this surrogate value using the same CMS, then acceptable NO_X concentration levels are attained even if the actual numerical value is not correct. Hence, the requirement to be accurate within plus or minus 5 percent is not necessary.

J. Excess Emissions and Monitor Downtime

The excess emission reporting provisions under 40 CFR 60.334 have been amended to include definitions of excess emissions and monitor downtime periods for the various emissions and parameter monitoring requirements. Periods of monitor downtime were not previously defined, so we have added definitions for those periods. New provisions have been added for CEMS and parametric monitoring for certain units; therefore, it is necessary to define the excess emissions and monitor downtime for turbines using these new monitoring options.

K. Other Clarifications

Several other minor clarifications have been made to the final rule. They are as follows: (1) Indicated that the sulfur content standard in 40 CFR 60.333(b) of 0.8 percent by weight is equivalent to 8000 ppmw; (2) clarified the NO_X standard in 40 CFR 60.332(a)(1) to indicate that it is an emission concentration and should be ISO corrected (if required); and (3) clarified the NO_X emission concentration equation in 40 CFR 60.335(b)(1) to indicate it is a concentration instead of a rate and that it is on a dry basis.

III. Summary of Responses to Major Comments

The following sections provide a summary of the major public comments made during the public comment period for the proposed rule. A complete summary of the comments and responses can be found in the Summary of Public Comments and Responses document, which is available from several sources (*see* **ADDRESSES** section).

A. Fuel Sampling/Sulfur Content

Comment: Several commenters wanted to see changes in the fuel sampling strategies. Some commenters wanted to see less sampling requirements, while others wanted more stringent requirements. One commenter felt that eliminating the daily fuel total sulfur content sampling requirement is not environmentally beneficial, and creates a situation where the emission of sulfur compounds is presumptive with no measured foundation. Other commenters felt that EPA should provide additional options to sampling for nitrogen and sulfur content in fuel oil, particularly when the unit only combusts fuel oil on a limited basis.

Response: We did not make any changes to the fuel sampling requirements in the final rule. The amendments did not eliminate any requirements for natural gas sulfur content sampling. Rather, they provide optional (not mandatory) relief from monitoring the sulfur content of natural gas. Natural gas is defined in the final rule as having a sulfur content of 20 grains or less of total sulfur per 100 standard cubic feet, which equates to 0.068 weight percent sulfur, or 680 ppmw. When natural gas is combusted, there is no possibility of exceeding the subpart GG of 40 CFR part 60 sulfur limit of 0.8 weight percent.

The commenter is not correct in asserting that this new provision is ''presumptive with no measured foundation.'' The final rule requires the owner or operator to document that the fuel meets the definition of natural gas in order to obtain the regulatory relief.

In regards to fuel oil, the revisions to § 60.334(i)(1) provide owners and operators with many options for scheduling of fuel oil sampling. They may sample on a per delivery basis; therefore, daily sampling is not a requirement. In addition, failure to sample deliveries of fuel oil if no fuel

oil has been combusted is not an excess emission if one of the other schedules has been retained. An owner or operator may utilize flow proportional sampling, which would require samples only if fuel oil is being combusted. Owners and operators are not precluded from taking one sample for the day for all units operated during an official ''unit operating day.'' No changes have been made to the proposed regulatory text in response to this comment.

B. Monitoring

Comment: Several comments were received on the proposed continuous monitoring provisions. Commenters stated that EPA should withdraw the optional continuous emission monitoring provisions under § 60.334(c), (e), and (f) for turbines that do not use water or steam injection to comply with the applicable NO_X emission standards.

One commenter requested that EPA make clear that the choice of whether to use a NO_X CEMS is entirely at the discretion of the source owner or operator, even in those cases where a NO_X CEMS is installed. The commenter also requested that EPA make clear that nothing in the final rule is intended to impose new requirements, or to alter or prevent other determinations regarding the adequacy of monitoring to comply with subpart GG of 40 CFR part 60. Some commenters recommended that EPA make clear in the final rule or preamble that (1) alternatives approved by State and local agencies under State authority, or delegation of authority from EPA are also valid, and (2) these amendments do not impose any new requirements, or require revision of existing permits, but simply provide several pre-approved options for sources that do not want to seek case-by-case approval.

Another commenter recommended the addition of language to § 60.334(c) indicating that existing turbines under subpart GG of 40 CFR part 60 without water or steam injection that are not required to implement continuous direct or indirect NO_X monitoring under their current approvals may continue to operate under the provisions of their current approvals. The commenter stated that an annual NO_X stack test could serve as an appropriate alternative to a NO_X CEMS or parametric monitoring for an existing subpart GG turbine with low annual utilization (< 1500 hours per year). For a small baseload turbine, an existing quarterly stack testing requirement would be an appropriate CEMS or parametric monitoring alternative.

Four commenters stated that the proposed revisions would wrongly impose significant new requirements for ongoing NO_X compliance monitoring on mid-range stationary gas turbines and turbines in natural gas transmission. One commenter gathered over 100 permits, including construction and title V permits, for turbines subject to the NSPS. Examination of the gathered permits showed that continuous monitoring of emissions or parameters has typically not been required. The commenters expressed opposition to the provisions proposed in § 60.334(c), which they believed fail to address existing mid-range turbines subject to the NSPS because the vast majority of these turbines have neither CEMS nor an EPA-approved petition for alternative monitoring. Even natural gas transmission turbines with emission limits dramatically lower than the current NSPS limits are not typically required to install CEMS. Additionally, lean premix turbines have little possibility of exceeding the NSPS emission limit as it currently stands. The commenters requested that EPA revise § 60.334(c) to clearly state that monitoring requirements included in existing permits should not be revised as a result of this rulemaking. The commenters also did not support the provisions proposed in § 60.334(e) and (f) because the commenters believed the provisions would impose significant new regulatory requirements on new NSPS turbines in natural gas transmission service and other mid-range units. In addition, one commenter stated that in the memo in the docket, EPA ignored the costs for the significant new requirements which would be imposed, since most of the natural gas transmission and other mid-range units do not currently have CEMS installed. Therefore, in their opinion, EPA has failed to estimate the true impacts of the final rule, including the impacts related to increased monitoring, recordkeeping and reporting requirements for their industry. The commenters recommended that EPA write § 60.334(e) and (f) so that they do not impose CEMS or continuous parameter monitoring requirements on owner/operators that are not otherwise required to use CEMS or continuous parametric monitoring, and to consider the current Agency approved NO_X compliance monitoring techniques that are used by the natural gas transmission industry for NSPS turbines as alternatives to the continuous monitoring provisions included in part 75.

Two commenters stated the EPA should not rely on the May 31, 1994 memorandum from John Rasnic (EPA Applicability Determinations Index, Control No. 9700124) regarding compliance monitoring for turbines that use technology other than water injection as the basis for the proposed subpart GG revisions. One commenter requested that the 1994 memorandum be formally withdrawn by the agency.

Two commenters suggested that if EPA intends to impose new monitoring requirements for NSPS turbines, EPA should issue a new proposal with that intent expressly stated. One commenter further stated that the proposal should include the full range of compliance monitoring for natural gas combustion turbines, as currently approved by EPA in existing permits for NSPS turbines, and should be performed in conjunction with the revisions of the NSPS emission standards.

Response: We have clarified in the preamble that nothing in the final rule amendments is intended to impose new requirements for turbines constructed between 1977 and the effective date of the final rule amendments. Instead, we have described a number of acceptable continuous compliance methodologies (*e.g.*, the use of CEMS) for these units. We have added language to the preamble and rule which clarifies that continuous compliance methodologies already approved by EPA or by the local permitting authority are still valid. We do not agree that these revisions would impose new requirements for these turbines. We have ensured that the regulatory language is clear with respect to the use of CEMS as an option, and also made sure that any previously approved methods are still valid. Hence, for existing turbines covered under subpart GG of 40 CFR part 60, there are no compliance costs associated with these amendments.

Comment: One commenter requested that EPA provide the option of monitoring either O_2 or carbon dioxide (CO_2) as a diluent when using a NO_X CEMS in § 60.334(b), in the interest of consistency with 40 CFR part 75.

Response: We agree that it is acceptable to make the required dilution correction with data from a CO_2 monitor. In the final rule, § 60.334(b) has been revised to include the CO_2 correction procedure from Method 20. The CO_2 readings must be converted to equivalent O_2 using equations F–14a or F–14b in 40 CFR part 75, appendix F.

Comment: One commenter requested that EPA clarify whether the revised subpart GG, 40 CFR part 60, allows application of the 40 CFR part 75 O_2 (or CO_2) Diluent Cap provisions. This

provision allows substitution of an O_2 value of 19 percent for any hour where O_2 is measured at levels greater than 19 percent.

Response: We agree that it is acceptable to provide a diluent cap procedure for reducing CEMS data. This comment has been incorporated. Section 60.334(b)(3)(i) of the final rule allows the diluent cap value of 19.0 percent O_2 to be used to calculate the NO_X emissions whenever the quality-assured hourly O_2 concentration measured by the O_2 monitor (or calculated from a CO_2 monitor reading) is greater than 19.0 percent O_2. No alternative petition will be required.

Comment: One commenter stated that EPA should amend the monitoring provisions of § 60.334(a) to clarify that monitoring applies only to those turbines that must use water or steam injection to control NO_X emissions ''to comply with the NO_X standards under § 60.332(a).'' The commenter noted that some turbines may be able to comply with the subpart GG, 40 CFR part 60, NO_X standard uncontrolled, but need water or steam injection to comply with a more stringent NO_X standard.

Response: We do not agree with the commenter's suggested clarification that the monitoring requirements should apply only to turbines that use steam or water injection to control NO_X emissions to comply with the NO_X standards under § 60.332(a). Water injection is mentioned in § 60.334(a) because it was the only emission control technology available for turbines when subpart GG, 40 CFR part 60, was proposed back in 1977. As we have done in the past, the use of alternative continuous monitoring methods may be approved by EPA on a case-by-case basis for turbines that do not use water injection to control NO_X. Although a turbine may be able to meet the NO_X emission standard with other control technologies, continuous monitoring is needed to ensure that the emission limit is being met at all times.

Comment: One commenter expressed the view that the proposed rule failed to address the use of NO_X concentration data that have been ''bias adjusted'' under 40 CFR part 75. The commenter stated that EPA should acknowledge that sources cannot be required to use bias adjusted data, as was done in 40 CFR part 60, subpart Da. The commenter noted that some turbines with emissions significantly lower than their subpart GG, 40 CFR part 60, limit may prefer to simplify their reporting by utilizing the same bias adjusted data for subpart GG and 40 CFR part 75 and suggested the EPA make reporting of bias adjusted data for ''excess emissions'' monitoring optional.

Response: The commenter's suggestion was not incorporated. Combustion turbines covered under 40 CFR part 75 that use CEMS for NO_X compliance are required to monitor and report the NO_X emission rate in pounds per million british thermal units (lb/MMBTU) on an hourly basis. To achieve this, a NO_X-diluent CEMS is used to continuously measure the NO_X concentration (ppm) and either the percent O_2 or percent CO_2. These measured gas concentrations are used to calculate the required hourly NO_X emission rates. Under 40 CFR part 75, the relative accuracy test audit (RATA) of a NO_X-diluent CEMS is performed on a lb/MMBTU basis. If, during the RATA, the NO_X emission rates calculated from the CEMS data are biased low with respect to the emission rates derived from the EPA reference methods, a bias adjustment factor must be applied to the subsequent hourly NO_X emission rates. Since the bias adjustment factor is applied to the lb/MMBTU NO_X emission rates and not to the NO_X ppm values, and since diluent concentration data are never adjusted for bias under 40 CFR part 75, there is no need to mention bias-adjusted data in subpart GG of 40 CFR part 60. The subpart GG emission limits are in units of ppm of NO_X, corrected to 15 percent O_2. Therefore, any 40 CFR part 75 NO_X concentration or O_2 data used to assess compliance with these emission limits would not be bias-adjusted.

Comment: One commenter urged EPA to use its $PM_{2.5}$ precursor foundation (67 FR 39602, June 10, 2002) to impose an ammonia (NH_3) CEMS obligation on all gas turbines that utilize SCR as NO_X control, with quarterly reporting for NO_X and NH_3 emissions.

Response: Since ammonia is not regulated under subpart GG, 40 CFR part 60, we do not support adding a continuous monitoring requirement for ammonia to the NSPS.

Comment: Two commenters stated that some turbines in the gas transmission industry are diffusion flame combustors, yet are small (1200 HP, 11 MMBTU/hr). The commenter feels that since the manufacturer guarantee is 100 ppm while the NSPS emission limit is 150 ppm NO_X, that a mandatory CEMS requirement is inappropriate and imposes an unreasonable regulatory burden.

Response: As was stated in the preamble, we did not intend to impose any new requirements on existing turbines covered subpart GG, 40 CFR part 60, through the promulgation of the final rule. We have clarified in the final rule that (1) alternatives approved by State and local agencies under State authority, or delegation of authority from EPA are also valid, and (2) these amendments do not impose any new requirements, or require revision of existing permits, but simply provide several pre-approved options for sources that do not want to seek case-by-case approval.

Comment: One commenter wanted EPA to explicitly reference appendix F of 40 CFR part 60, regarding quality assurance procedures for NO_X CEMS.

Response: Continuous emission monitoring systems are used as an alternative to water to fuel ratio monitoring, to identify and report periods of excess emissions, and, therefore, appendix F, procedure 1, 40 CFR part 60, is not mandatory. Section 60.334(b)(4) has been removed.

Comment: Three commenters did not support the proposed changes presented in § 60.334(f), which address continuous parameter monitoring as an alternative to CEMS for new turbines that do not use steam or water injection to control NO_X emissions. The commenters noted that continuous parameter monitoring is not consistent with monitoring typically required for mid-range stationary gas turbines, including turbines used in natural gas transmission service, and would impose significant new regulatory requirements on these. Commenters recommended that EPA write the provisions in the final rulemaking to effect EPA's original intent of codifying the option to use continuous parameter monitoring, when otherwise required for other reasons such as 40 CFR part 75, without imposing significant new requirements on other owners or operators. The commenter also recommended that EPA explicitly state in the preamble that permitting authorities, under title V periodic monitoring or other programs, are not restricted to continuous monitoring of emissions or parameters and may continue to consider the full range of compliance monitoring options for gas-fired turbines. One commenter supported EPA's goal of allowing owners or operators the flexibility to use data from continuous parameter monitoring already required for other reasons to demonstrate compliance with the NSPS. However, the commenter does not support a mandatory requirement for continuous parameter monitoring and requests that EPA withdraw § 60.334(f) from the direct final and proposed rules.

In addition, two commenters stated that new lean premix turbines have little possibility of exceeding the NSPS emission limit as it currently stands.

Indeed, verification of lean premix combustion ensures NO_X emissions at levels far below the current NSPS emission limit. Equally, information about operation outside of lean premix does not provide meaningful information about whether a unit has failed to comply with the current NSPS emission limit.

Response: As was stated in the preamble, we did not intend to impose any new requirements through the promulgation of the final rule. We have clarified in the final rule and preamble that the amendments do not impose any new requirements but simply provide several pre-approved options for sources that do not want to seek case-by-case approval.

In regard to the comment that new lean premix turbines are able to comply with the current emission limit with little possibility of exceeding the standards, we plan to amend the emission limitations in subpart GG, 40 CFR part 60, as part of an upcoming rulemaking.

Comment: One commenter opposed and requested the removal of the parameter monitoring plan requirement proposed in § 60.334(g). They further stated that it does not streamline the differences between subpart GG, 40 CFR part 60, and 40 CFR part 75 appendix E requirements. According to the commenter, appendix E adequately addressed this issue. One commenter requested that the provisions in § 60.334(g), which address the use of performance test data to establish acceptable parameter ranges, be written to provide the opportunity for owners and operators to establish and/or adjust operating parameter limitations based on performance tests, engineering analysis, design specifications, manufacturer recommendations or other applicable information, such as a performance test on a similar unit. Since gas transmission units are load following, it may not be possible to operate at specific load conditions at the predetermined time scheduled for the performance test, and maximum and minimum load condition emissions may not be seen during the performance test. A similar unit, however, can exhibit representative emissions for developing parameter limitations.

Response: The requirement to develop and maintain a parameter monitoring plan has been retained in the final rule. For units that use continuous parameter monitoring to assess compliance with the emission limits under subpart GG, 40 CFR part 60, it is essential for the owner or operator to clearly identify the monitored parameters and their acceptable ranges, and to provide the technical basis for selecting those parameters and ranges. Section 60.334(g) of the final rule allows the owner or operator to supplement the parametric data recorded at the time of the initial performance test with other types of information, in order to establish the appropriate parametric ranges and values.

In response to the comment about units under appendix E, 40 CFR part 75, § 60.334(f) and (g) of the final rule make it clear that if the owner or operator performs the parametric monitoring described in section 2.3 of appendix E, 40 CFR part 75, and maintains the quality assurance (QA) plan described in section 1.3.6 of 40 CFR part 75, appendix B, this will satisfy the requirements of subpart GG of 40 CFR part 60. For the sake of completeness, for low mass emissions (LME) units, the final rule also allows the owner or operator to use the QA plan described in § 75.19(e)(5) to satisfy the parameter monitoring plan requirements of subpart GG.

Comment: Two commenters stated that continuous parameter monitoring is not appropriate for new diffusion flame turbines subject to NSPS. Some models of diffusion flame combustors are installed for the natural gas industry for which there are no predictive emission monitoring systems available. Development of one would impose an unreasonable burden on the industry.

Response: Predictive emission monitoring systems (PEMS), are very different from the parameter monitoring option that we have added to the final rule. Continuous parameter monitoring refers to the monitoring of operating conditions or parameters, such as turbine exhaust temperature, compressor discharge pressure, or any others which may be indicative of the unit's NO_X formation characteristics. Predictive emission monitoring systems, on the other hand, predict actual emission rates or concentrations from operating parameters that affect NO_X formation. Parameter monitoring oversees operating parameter boundaries, while PEMS measure emission rates or concentrations. Adding the option to continuously monitor parameters that are indicative of the unit's NO_X formation characteristics would not impose an unreasonable burden on the industry. No changes have been made from the proposed rule to the final rule to address this comment.

Comment: One commenter opposed the 4-hour averaging period to determine compliance. The commenter stated that EPA should base averaging times on the stated permit conditions of a Prevention of Significant Deterioration/New Source Review (PSD/NSR) permit issued by the permitting authority and that subpart GG, 40 CFR part 60, should remain silent on this issue other than the time it takes to conduct the required compliance stack testing.

Response: We do not agree with the commenter. The 4-hour averaging period has been retained in the final rule. The commenter is incorrect in asserting that subpart GG, 40 CFR part 60, should be silent on the issue of the averaging period for excess emission reporting. Each NSPS subpart that requires excess emission monitoring and reporting with respect to a particular emission limit must specify an averaging period. If a subpart GG turbine is subject to another more stringent NO_X emission limit with a different averaging period than subpart GG (*e.g.* a permit limit), and if the unit's operating permit requires excess emission reporting with respect to that limit, then two separate excess emission reports must be filed, *i.e.*, one to satisfy subpart GG requirements and the other to meet the permit requirement.

Comment: One commenter did not believe that EPA's attempt to distinguish between ''excess emissions'' and ''deviations'' is necessary since neither are violations under subpart GG, 40 CFR part 60. The commenter was also concerned that the choice of the term ''deviation'' could cause confusion in the context of title V permits and State Implementation Plans (SIP) and suggested the EPA either continue to use the term ''excess emissions'' for all reported parameters under subpart GG, or follow the terminology adopted in the Compliance Assurance Monitoring rule at 40 CFR part 64, which refers to parameter exceedances as ''excursions.''

Response: We agree with the commenter that it is not necessary to distinguish between ''deviations'' and ''excess emissions.'' Both terms represent an averaging period during which a monitored parameter exceeds the limit specified in the final rule. Therefore, use of the term ''deviation'' in addition to ''excess emissions'' would be redundant. The final rule does not use the term ''deviation.''

Comment: One commenter requested clarification on § 60.334(j)(2), which says that periods of excess emissions and monitor downtime end on the date and hour of the next valid sample. The commenter stated that EPA should clarify that the period of excess emissions and/or monitor downtime from the start date to the next valid sample includes only unit operating hours.

Another commenter requested that the 4-hour rolling averaging period for NO_X emissions extend backward three operating hours, not three quality assured operating hours. The commenter noted that the standard CEMS vendor software is configured to look back a fixed number of calendar or on-line hours, but not quality assured hours.

Response: We agree with both commenters, and have written the final rule accordingly. ''Quality assured'' has been removed when used in reference to the rolling averaging period.

Comment: Two commenters requested clarification on the issue of compliance during startup and shutdown. One commenter asked whether startup and shutdown hours can be excluded from the 4-hour NO_X CEMS rolling averages used for compliance determination. The commenter also asked how site specific startup and shutdown periods should be established and whether the site can simply use manufacturer's recommended durations. One commenter stated that EPA should modify § 60.334(j)(1)(iii)(A) to add language clarifying that the average excludes emissions from startup, shutdown, and malfunctions.

Two commenters remarked that the requirement in § 60.334(j)(1)(i)(A) that ''any unit operating hour in which no water or steam is injected into the turbine shall also be considered a deviation'' does not appear to exempt startup or shutdown transients. One commenter said that any gas turbine equipped with steam or water injection for NO_X control would always have a deviation during startup and shutdown transients. According to the commenter, steam or water injection is usually initiated between 20 to 50 percent of base load during startup and is likewise discontinued during the shutdown transient. One commenter recommended revising the wording of the last sentence of the section to read as follows: ''Any unit operating hour in which no water or steam is injected into the turbine shall also be considered a deviation *for purposes of reporting periods of startup, shutdown, and malfunction*.''

Response: In response to these comments, § 60.334(j) of the final rule has been written to clearly state that excess emissions must be recorded during all periods of unit operation, including startup, shutdown and malfunction. All excess emissions are reported and categorized. Note that the final rule does not use the term ''deviation.'' Startup and shutdown are two of those categories. We recognize that even for well-operated units with efficient NO_X emission controls, excess emission ''spikes'' during unit startup and shutdown are inevitable, and malfunctions of emission controls and process equipment occasionally occur. However, at all times, including periods of startup, shutdown and malfunction, § 60.11(d) requires affected units to be operated in a manner consistent with good air pollution control practice for minimizing emissions. Excess emission data may be used to determine whether a facility's operation and maintenance procedures are consistent with § 60.11(d).

C. Test Methods and Procedures

Comment: One commenter requested that EPA allow performance tests to be conducted in the normal operating range of the gas turbine and allow for testing units that cannot be operated at ''peak load'' due to process constraints. The commenter suggested that instead of 90 to 100 percent of peak load, the owner or operator could test at the highest achievable load point if 90 to 100 percent of peak load could not physically be achieved in practice.

Response: The final rule incorporates the commenter's suggested revisions to § 60.335(b)(2). It is reasonable to make allowance for units that are not physically capable of attaining 90-to-100 percent of peak load.

Comment: One commenter suggested that if the permitted operating range of a turbine is sufficiently narrow, the required number of load levels for performance testing should be appropriately reduced. The commenter suggested that a minimum load level spacing of 20 percent be established.

Response: The requirement for four points for performance testing is necessary. The purpose of the data is to establish a water to fuel ratio. Two points are not enough to establish a statistically relevant relationship. Thus, we have not made any changes from the proposed rule to the final rule related to this comment.

Comment: Two commenters noted that the reference in § 60.335(a) to the procedures in section 6.5.6.3(a) and (c) of 40 CFR part 75, appendix A, should be changed to section 6.5.6.3 (a) and (b). Similarly, one commenter requested that the single measurement point identified in sections 6.5.6(b)(4) and 6.5.6.3(b) of 40 CFR part 75, appendix A, be added to the final rule. The commenter noted that the stratification testing procedure for a single measurement point is identical to the long and short measurement lines and the acceptance criteria for a single measurement point is more stringent.

Response: We agree with the commenter that measurement at a single point is appropriate in certain situations. In the interest of consistency with 40 CFR part 75, we have indicated in the final rule that data collected following section 6.5.6.1 can be used. Also, we have written the initial performance test requirements in § 60.335(a) to reflect that this option is available. However, because recently proposed revisions to Method 7E have more restrictive criteria at lower concentrations than those in section 6.5.6.3 of 40 CFR part 75, it is not appropriate to allow consistency in this case. Therefore, we have removed reference to section 6.5.6.3 of 40 CFR part 75 in the final rule. It is still possible to use the same data and choose the more restrictive number of sampling locations.

Comment: Two commenters recommended that a subparagraph be added to § 60.335(a) to clearly distinguish requirements for owners and operators that opt for using ASTM D6522–00 or EPA Method 7E instead of Method 20. One commenter suggested that the following should be appended to paragraph (a): ''Other acceptable alternative reference methods and procedures are given in paragraph (c) of this section.''

The commenters noted that much of the new language EPA has added to the test methods and procedures under § 60.335(a) pertains to RATA and as these requirements are being applied to performance testing, any reference to a RATA is inappropriate and should be replaced with ''performance testing.''

Response: We agree with the commenter that requirements for those opting to use ASTM D6522–00 and/or EPA Method 7E should be clarified. Section 60.335(a) has been modified accordingly. We also agree that references to a RATA in § 60.335(a) should be deleted and replaced with ''performance testing'' and have written the final rule accordingly.

Comment: Two commenters requested that EPA revise § 60.335(a), which specifies that owners or operators choosing to use EPA Methods 7E and 3A (or 3) for NO_X performance testing must perform a stratification test for NO_X and diluent under 40 CFR part 75, appendix A, section 6.5.6.1(a)–(e) in order to determine if subsequent RATA testing will occur along a short or long reference method measurement line. One commenter appreciated EPA's proposal to add the option of using a short measurement line, but did not understand why a source that chooses to use the long reference measurement line would need to perform the stratification

test. One commenter stated that if a source agrees to use the most stringent options (*i.e.*, the long measurement line), it would seem unnecessary to require a stratification check.

Response: Section 60.335(a) applies to a performance test, not a RATA. We agree that if a source provides initial documentation that stratification does not exist, it is appropriate to have a reduced number of sampling points. We also agree that a source can skip the stratification test and default to using a multi-hole probe, and § 60.335 has been modified accordingly. However, because it is possible to have spatial stratification due to several reasons such as ammonia injection that would not be accounted for with the long measurement line, we are requiring documentation that stratification does not exist. We have also indicated that the use of data following section 6.5.6.1 of 40 CFR part 75 can be used. In addition, we have reserved a paragraph in § 60.335(a)(5)(i)(A) that will give the option of using stratification testing protocols that were proposed for Methods 7E and 3A in a separate **Federal Register** action.

D. ISO Correction

Comment: Two commenters recommended the removal of the ISO correction calculation. According to one commenter, the calculation is not practical for the modern turbine, and incorporation of the ISO correction factor within a CEMS requires burdensome administrative changes and unnecessary certification. As an alternative to removal of the ISO correction calculation, the commenter expressed support for making the ISO correction optional for specific gas turbines.

Another commenter recommended that EPA harmonize subpart GG, 40 CFR part 60, with 40 CFR part 75 monitoring requirements, eliminating any requirement to correct to ISO conditions, instead correcting to 15 percent O_2. The commenter also said that EPA should recognize the use of water injection as an add-on emission control device. The commenter noted that many lean premix units operate in limited use diffusion flame mode with water injection for emissions control and recommended that EPA recognize these dual-fuel units as lean premix where the primary fuel is natural gas combusted in lean premix mode. Further, they suggested that EPA exempt from ISO correction units that employ water injection when monitored in accordance with 40 CFR part 75 requirements. Similarly, one commenter recommended that diffusion flame units using water injection to control NO_X be exempt from the ISO data correction. Their rationale is that water injection cools the flame temperature to a level where NO_X is no longer primarily produced by thermal processes (much like lean premix, where the majority of NO_X is not produced thermally).

One commenter suggested that any turbine equipped with a NO_X CEMS be provided the option of not applying the ISO correction, irrespective of its design or configuration.

One commenter observed that the use of the ISO correction equation has no technical basis for gas turbines with lean premix combustors or for diffusion flame combustors with water or steam injection and NO_X levels significantly below the subpart GG, 40 CFR part 60, levels of 75 ppm.

Response: No adequate rationale was provided for exempting all turbines from the ISO correction factor. The ISO correction factor was initially developed for diffusion flame units, and no rationale has been provided for making it optional for these units. The ISO correction factor continues to be appropriate for diffusion flame units and water or steam injected units. The need for the ISO correction factor will continue as we begin the process of revising the emission limits in subpart GG, 40 CFR part 60, in the near future. We have also clarified in the final rule that when a unit is capable of using both lean premix and diffusion flame modes, it is considered a lean premix stationary combustion turbine when it is in the lean premix mode, and it is considered a diffusion flame stationary combustion turbine when it is in the diffusion flame mode.

Comment: Two commenters recommended that EPA remove the requirement to record ambient conditions when operating a turbine. One commenter stated that this requirement is burdensome and unnecessary and adds an administrative requirement that has no bearing on the environment. One commenter stated that for turbine units that are exempt from applying the ISO correction or which apply worst case ambient conditions to make the ISO corrections, the reporting of ambient conditions is unnecessary and represents a significant burden, since they are not collecting this data on-site.

Response: The ambient condition data is not used for any purpose other than the ISO correction. Therefore, we agree that the requirement in the proposed § 60.334(j)(1)(i)(C) and (iii)(C) to report the ambient conditions is unnecessary for those turbines for which the ISO correction is optional under § 60.335(b)(1). Also, reporting of ambient conditions is not necessary if an owner or operator chooses to calculate and apply a worst case ISO correction factor as specified in § 60.334(b)(3)(ii). Reporting of ambient conditions is still necessary for turbines that are required to use the ISO correction factor and do not opt to use a worst case ISO correction factor. We have written the final rule accordingly.

E. Emission Standards

Comment: A few commenters suggested revising the emission limits for sulfur and nitrogen in subpart GG, 40 CFR part 60.

Response: We will address emission limits in a future rulemaking amending subpart GG. We have not amended the emission limitations at this time.

F. Duct Burners

Comment: One commenter expressed the opinion that the option to measure gas turbine NO_X emissions in the exhaust stream after the duct burner rather than directly after the turbine is not viable as written because it does not account for the additional NO_X contribution from the duct burner. The commenter stated that the final rule should be written to provide for the duct burner NO_X contribution.

Response: The purpose of the final rule amendment was to allow owners and operators the flexibility of making one measurement downstream of the duct burner since many turbines are able to comply with the NO_X limit even with the potential NO_X contribution resulting from the duct burner. Accounting for the NO_X contribution from the duct burner would require two NO_X measurements, which clearly defeats the purpose of the amendment. Furthermore, owners and operators still have the option of simply measuring NO_X emissions in the turbine exhaust, prior to the duct burner. For these reasons, we disagree with the commenter and have not made any changes from the proposed rule to the final rule with respect to this provision.

IV. Environmental and Economic Impacts

The final rule amendments will not have any significant economic or environmental impacts. The amendments have been written primarily to codify routine testing and monitoring alternatives that have previously been approved by us. We are not introducing any new emission limitations, control requirements, or monitoring requirements. We are attempting to reduce the testing, monitoring, and reporting burden by

harmonizing with the requirements of 40 CFR part 75, since many gas turbines are subject to it as well as subpart GG of 40 CFR part 60.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to EO 12866 review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The amendments contain no changes to the information collection requirements of the current NSPS that would increase the burden to sources, and the currently approved OMB information collection requests are still in force for the amended rule. Some amendments in the final rule, such as allowing the use of CEMS to measure NO_X emissions, are provided as an option to sources, and should reduce burden to those sources who already have a CEMS in place for other regulatory reasons, such as the Acid Rain requirements in 40 CFR part 75. Other amendments, such as the allowance of parametric monitoring in place of water to fuel ratio monitoring, do not result in additional recordkeeping and reporting requirements beyond those already required.

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule.

For purposes of assessing the impacts of the final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kW-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in six NAICS codes may be affected by the final rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR part 121).

After considering the economic impacts of the final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. §§ 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Our conclusion that today's final rule will relieve regulatory burden on small entities is based primarily upon the estimated cost savings to turbine owners and operators as a result of the revisions to 40 CFR part 60, subpart GG, that are presented earlier in this preamble. These cost savings will be experienced by turbines owned and operated by small entities as well as large ones. Using the existing combustion turbines inventory as a measure of which industries may install new turbines in the future, presuming the existing mix of current combustion turbines is a good approximation of the mix of turbines that will be installed and affected by the final rule up to 2007, 2.5 percent of new turbines overall will likely be owned and operated by small entities. Of these entities, a majority of these are owned and operated by small communities.

For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative

other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule amendments contain no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action codifies alternative testing and monitoring procedures that have routinely been approved by EPA. There are minimal, if any, impacts associated with this action. Thus, Executive Order 13132 does not apply to the final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. We do not know of any stationary gas turbines owned or operated by Indian tribal governments. However, if there are any, the effect of the final rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

These final rule amendments involve technical standards. The EPA cites the following methods in the final rule amendments: EPA Methods 1, 3, 3A, 7E, and 20 of 40 CFR part 60, appendix A; and PS 2 and 3 of 40 CFR part 60, appendix B. In addition, these final rule amendments cite the following standards that are also incorporated by reference (IBR) in 40 CFR part 60, section 17: ASTM D129–00, ASTM D1072–80 or –90 (Reapproved 1999), ASTM D1266–98, ASTM D1552–01, ASTM D2597–94 (Reapproved 1999), ASTM D2622–98, ASTM D3246–81 or –92 or –96, ASTM D4084–82 or –94, ASTM D4294–02, ASTM D4468–85 (Reapproved 2000), ASTM D4629–02, ASTM D5453–00, ASTM D5504–01, ASTM D5762–02, ASTM D6228–98, ASTM D6366–99, ASTM D6522–00, ASTM D6667–01, and Gas Processors Association Standard 2377–86.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods/performance specifications. No applicable voluntary consensus standards were identified for PS 3. The search and review results have been documented and are placed in the docket (OAR–2002–0053) for the final rule amendments.

One voluntary consensus standard was identified as an acceptable alternative to the EPA methods specified in the final rule amendments. The standard ASTM D6522–00, ''Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers,'' is cited in the final rule amendments as an acceptable alternative to EPA Methods 3A, 7E, and 20 for identifying nitrogen oxide and oxygen concentration when the fuel is natural gas. This standard, ASTM D6522–00, has been also IBR in 40 CFR part 60, section 17.

In addition to the voluntary consensus standards EPA uses in the final rule amendments, the search for emissions measurement procedures identified eight other voluntary consensus standards. The EPA determined that seven of these eight standards identified for measuring air emissions or surrogates subject to emission standards in the final rule amendments were impractical alternatives to EPA test methods/performance specifications for the purposes of these final rule amendments. Therefore, the EPA does not intend to adopt these standards. See the docket for the reasons for the determinations of these seven methods.

Sections 60.334 and 60.335 of the final rule amendments to subpart GG, 40 CFR part 60, discuss the EPA testing methods, performance specification, and procedures required. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. The final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 24, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended to read as follows:

PART 60—[Amended]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[AMENDED]

■ 2. Section 60.17 is amended by:
■ a. Removing and reserving paragraph (a)(38);
■ b. Revising paragraph (a) introductory text;
■ c. Revising paragraph (a)(8);
■ d. Revising paragraph (a)(15);
■ e. Revising paragraph (a)(18);
■ f. Revising paragraph (a)(20);
■ g. Revising paragraph (a)(33);
■ h. Revising paragraph (a)(43);
■ i. Revising paragraph (a)(50);
■ j. Adding paragraphs (a)(65) through (a)(75); and
■ k. Adding paragraph (m).

The revisions and additions read as follows:

§ 60.17 Incorporation by Reference

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

* * * * *

(8) ASTM D129–64, 78, 95, 00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for appendix A: Method 19, 12.5.2.2.3; §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(15) ASTM D1072–80, 90 (Reapproved 1994), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.335(b)(10)(ii).

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(18) ASTM D1266–87, 91, 98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(20) ASTM D1552–83, 95, 01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for appendix A: Method 19, Section 12.5.2.2.3; §§ 60.106(j)(2) and 60.335(b)(10)(i).

* * * * *

(33) ASTM D2622–87, 94, 98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry,'' IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(43) ASTM D3246–81, 92, 96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b)(10)(ii).

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(50) ASTM D4084–82, 94, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 60.334(h)(1).

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(65) ASTM D2597–94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography, IBR approved for § 60.335(b)(9)(i).

(66) ASTM D4294–02, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X–Ray Fluorescence Spectrometry, IBR approved for § 60.335(b)(10)(i).

(67) ASTM D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 60.335(b)(10)(ii).

(68) ASTM D4629–02, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection, IBR approved for § 60.335(b)(9)(i).

(69) ASTM D5453–00, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(i).

(70) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and

Chemiluminescence, IBR approved for § 60.334(h)(1).

(71) ASTM D5762–02, Standard Test Method for Nitrogen in Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence, IBR approved for § 60.335(b)(9)(i).

(72) ASTM D6228–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 60.334(h)(1).

(73) ASTM D6366–99, Standard Test Method for Total Trace Nitrogen and Its Derivatives in Liquid Aromatic Hydrocarbons by Oxidative Combustion and Electrochemical Detection, IBR approved for § 60.335(b)(9)(i).

(74) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 60.335(a).

(75) ASTM D6667–01, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(ii).

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(m) This material is available for purchase from at least one of the following addresses: The Gas Processors Association, 6526 East 60th Street, Tulsa, OK, 74145; or Information Handling Services, 15 Inverness Way East, PO Box 1154, Englewood, CO 80150–1154. You may inspect a copy at EPA's Air and Radiation Docket and Information Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460.

(1) Gas Processors Association Method 2377–86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, IBR approved for § 60.334(h)(1).

Subpart GG—[Amended]

■ 3. Section 60.331 is amended by adding paragraphs (s) through (y) to read as follows:

§ 60.331 Definitions.

* * * * *

(s) *Unit operating hour* means a clock hour during which any fuel is combusted in the affected unit. If the unit combusts fuel for the entire clock hour, it is considered to be a full unit operating hour. If the unit combusts fuel for only part of the clock hour, it is considered to be a partial unit operating hour.

(t) *Excess emissions* means a specified averaging period over which either:

(1) The NO_X emissions are higher than the applicable emission limit in § 60.332;

(2) The total sulfur content of the fuel being combusted in the affected facility exceeds the limit specified in § 60.333; or

(3) The recorded value of a particular monitored parameter is outside the acceptable range specified in the parameter monitoring plan for the affected unit.

(u) *Natural gas* means a naturally occurring fluid mixture of hydrocarbons (*e.g.*, methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. Natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Equivalents of this in other units are as follows: 0.068 weight percent total sulfur, 680 parts per million by weight (ppmw) total sulfur, and 338 parts per million by volume (ppmv) at 20 degrees Celsius total sulfur. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1100 British thermal units (Btu) per standard cubic foot. Natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

(v) *Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, *etc.,* to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

(w) *Lean premix stationary combustion turbine* means any stationary combustion turbine where the air and fuel are thoroughly mixed to form a lean mixture for combustion in the combustor. Mixing may occur before or in the combustion chamber. A unit which is capable of operating in both lean premix and diffusion flame modes is considered a lean premix stationary combustion turbine when it is in the lean premix mode, and it is considered a diffusion flame stationary combustion turbine when it is in the diffusion flame mode.

(x) *Diffusion flame stationary combustion turbine* means any stationary combustion turbine where fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition. A unit which is capable of operating in both lean premix and diffusion flame modes is considered a lean premix stationary combustion turbine when it is in the lean premix mode, and it is considered a diffusion flame stationary combustion turbine when it is in the diffusion flame mode.

(y) *Unit operating day* means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

■ 4. Section 60.332 is amended by:

■ a. Revising the terms to the equations in paragraphs (a)(1) through (2);

■ b. Redesignating paragraph (a)(3) as (a)(4);

■ c. Revising newly designated paragraph (a)(4); and

■ c. Adding a new paragraph (a)(3).

The revisions and additions read as follows:

§ 60.332 Standard for nitrogen oxides.

(a) * * *

(1) * * *

Where:

STD = allowable ISO corrected (if required as given in § 60.335(b)(1)) NO_X emission concentration (percent by volume at 15 percent oxygen and on a dry basis),

Y = manufacturer's rated heat rate at manufacturer's rated load (kilojoules per watt hour) or, actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour, and

F = NO_X emission allowance for fuel-bound nitrogen as defined in paragraph (a)(4) of this section.

(2) * * *

Where:

STD = allowable ISO corrected (if required as given in § 60.335(b)(1)) NO_X emission concentration (percent by volume at 15 percent oxygen and on a dry basis),

Y = manufacturer's rated heat rate at manufacturer's rated peak load (kilojoules per watt hour), or actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour, and

F = NO_X emission allowance for fuel-bound nitrogen as defined in paragraph (a)(4) of this section.

(3) The use of F in paragraphs (a)(1) and (2) of this seciton is optional. That

is, the owner or operator may choose to apply a NO_X allowance for fuel-bound nitrogen and determine the appropriate F-value in accordance with paragraph (a)(4) of this section or may accept an F-value of zero.

(4) If the owner or operator elects to apply a NO_X emission allowance for fuel-bound nitrogen, F shall be defined according to the nitrogen content of the fuel during the most recent performance test required under § 60.8 as follows:

Fuel-bound nitrogen (percent by weight)	F (NO_X percent by volume)
N ≤ 0.015	0
0.015 < N≤ 0.1	0.04(N)
0.1 < N ≤ 0.25 ..	0.004+0.0067(N–0.1)
N > 0.25	0.005

Where:

N = the nitrogen content of the fuel (percent by weight).

or:

Manufacturers may develop and submit to EPA custom fuel-bound nitrogen allowances for each gas turbine model they manufacture. These fuel-bound nitrogen allowances shall be substantiated with data and must be approved for use by the Administrator before the initial performance test required by § 60.8. Notices of approval of custom fuel-bound nitrogen allowances will be published in the **Federal Register**.

* * * * *

■ 5. Section 60.333 is amended by revising paragraph (b) to read as follows:

§ 60.333 Standard for sulfur dioxide.

* * * * *

(b) No owner or operator subject to the provisions of this subpart shall burn in any stationary gas turbine any fuel which contains total sulfur in excess of 0.8 percent by weight (8000 ppmw).

■ 6. Section 60.334 is amended by:
■ a. Revising paragraphs (a) and (b);
■ b. Redesignating paragraph (c) as paragraph (j);
■ c. Adding a new paragraph (c);
■ d. Adding paragraphs (d) through (i);
■ e. Revising newly designated paragraph (j) introductory text, (j)(1) and (j)(2); and
■ f. Adding paragraph (j)(5).

The revisions and additions read as follows:

§ 60.334 Monitoring of operations.

(a) Except as provided in paragraph (b) of this section, the owner or operator of any stationary gas turbine subject to the provisions of this subpart and using water or steam injection to control NO_X emissions shall install, calibrate, maintain and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water or steam to fuel being fired in the turbine.

(b) The owner or operator of any stationary gas turbine that commenced construction, reconstruction or modification after October 3, 1977, but before July 8, 2004, and which uses water or steam injection to control NO_X emissions may, as an alternative to operating the continuous monitoring system described in paragraph (a) of this section, install, certify, maintain, operate, and quality-assure a continuous emission monitoring system (CEMS) consisting of NO_X and O_2 monitors. As an alternative, a CO_2 monitor may be used to adjust the measured NO_X concentrations to 15 percent O_2 by either converting the CO_2 hourly averages to equivalent O_2 concentrations using Equation F–14a or F–14b in appendix F to part 75 of this chapter and making the adjustments to 15 percent O_2, or by using the CO_2 readings directly to make the adjustments, as described in Method 20. If the option to use a CEMS is chosen, the CEMS shall be installed, certified, maintained and operated as follows:

(1) Each CEMS must be installed and certified according to PS 2 and 3 (for diluent) of 40 CFR part 60, appendix B, except the 7-day calibration drift is based on unit operating days, not calendar days. Appendix F, Procedure 1 is not required. The relative accuracy test audit (RATA) of the NO_X and diluent monitors may be performed individually or on a combined basis, *i.e.*, the relative accuracy tests of the CEMS may be performed either:

(i) On a ppm basis (for NO_X) and a percent O_2 basis for oxygen; or

(ii) On a ppm at 15 percent O_2 basis; or

(iii) On a ppm basis (for NO_X) and a percent CO_2 basis (for a CO_2 monitor that uses the procedures in Method 20 to correct the NO_X data to 15 percent O_2).

(2) As specified in § 60.13(e)(2), during each full unit operating hour, each monitor must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each 15-minute quadrant of the hour, to validate the hour. For partial unit operating hours, at least one valid data point must be obtained for each quadrant of the hour in which the unit operates. For unit operating hours in which required quality assurance and maintenance activities are performed on the CEMS, a minimum of two valid data points (one in each of two quadrants) are required to validate the hour.

(3) For purposes of identifying excess emissions, CEMS data must be reduced to hourly averages as specified in § 60.13(h).

(i) For each unit operating hour in which a valid hourly average, as described in paragraph (b)(2) of this section, is obtained for both NO_X and diluent, the data acquisition and handling system must calculate and record the hourly NO_X emissions in the units of the applicable NO_X emission standard under § 60.332(a), *i.e.*, percent NO_X by volume, dry basis, corrected to 15 percent O_2 and International Organization for Standardization (ISO) standard conditions (if required as given in § 60.335(b)(1)). For any hour in which the hourly average O_2 concentration exceeds 19.0 percent O_2, a diluent cap value of 19.0 percent O_2 may be used in the emission calculations.

(ii) A worst case ISO correction factor may be calculated and applied using historical ambient data. For the purpose of this calculation, substitute the maximum humidity of ambient air (Ho), minimum ambient temperature (T_a), and minimum combustor inlet absolute pressure (P_o) into the ISO correction equation.

(iii) If the owner or operator has installed a NO_X CEMS to meet the requirements of part 75 of this chapter, and is continuing to meet the ongoing requirements of part 75 of this chapter, the CEMS may be used to meet the requirements of this section, except that the missing data substitution methodology provided for at 40 CFR part 75, subpart D, is not required for purposes of identifying excess emissions. Instead, periods of missing CEMS data are to be reported as monitor downtime in the excess emissions and monitoring performance report required in § 60.7(c).

(c) For any turbine that commenced construction, reconstruction or modification after October 3, 1977, but before July 8, 2004, and which does not use steam or water injection to control NO_X emissions, the owner or operator may, for purposes of determining excess emissions, use a CEMS that meets the requirements of paragraph (b) of this section. Also, if the owner or operator has previously submitted and received EPA or local permitting authority approval of a petition for an alternative procedure of continuously monitoring compliance with the applicable NO_X emission limit under § 60.332, that approved procedure may continue to be used, even if it deviates from paragraph (a) of this section.

(d) The owner or operator of any new turbine constructed after July 8, 2004, and which uses water or steam injection to control NO_X emissions may elect to use either the requirements in paragraph (a) of this section for continuous water or steam to fuel ratio monitoring or may use a NO_X CEMS installed, certified, operated, maintained, and quality-assured as described in paragraph (b) of this section.

(e) The owner or operator of any new turbine that commences construction after July 8, 2004, and which does not use water or steam injection to control NO_X emissions may elect to use a NO_X CEMS installed, certified, operated, maintained, and quality-assured as described in paragraph (b) of this section. An acceptable alternative to installing a CEMS is described in paragraph (f) of this section.

(f) The owner or operator of a new turbine who elects not to install a CEMS under paragraph (e) of this section, may instead perform continuous parameter monitoring as follows:

(1) For a diffusion flame turbine without add-on selective catalytic reduction controls (SCR), the owner or operator shall define at least four parameters indicative of the unit's NO_X formation characteristics and shall monitor these parameters continuously.

(2) For any lean premix stationary combustion turbine, the owner or operator shall continuously monitor the appropriate parameters to determine whether the unit is operating in the lean premixed (low-NO_X) combustion mode.

(3) For any turbine that uses SCR to reduce NO_X emissions, the owner or operator shall continuously monitor appropriate parameters to verify the proper operation of the emission controls.

(4) For affected units that are also regulated under part 75 of this chapter, if the owner or operator elects to monitor NO_X emission rate using the methodology in appendix E to part 75 of this chapter, or the low mass emissions methodology in § 75.19 of this chapter, the requirements of this paragraph (f) may be met by performing the parametric monitoring described in section 2.3 of appendix E or in § 75.19(c)(1)(iv)(H) of this chapter.

(g) The steam or water to fuel ratio or other parameters that are continuously monitored as described in paragraphs (a), (d) or (f) of this section shall be monitored during the performance test required under § 60.8, to establish acceptable values and ranges. The owner or operator may supplement the performance test data with engineering analyses, design specifications, manufacturer's recommendations and other relevant information to define the acceptable parametric ranges more precisely. The owner or operator shall develop and keep on-site a parameter monitoring plan which explains the procedures used to document proper operation of the NO_X emission controls. The plan shall include the parameter(s) monitored and the acceptable range(s) of the parameter(s) as well as the basis for designating the parameter(s) and acceptable range(s). Any supplemental data such as engineering analyses, design specifications, manufacturer's recommendations and other relevant information shall be included in the monitoring plan. For affected units that are also subject to part 75 of this chapter and that use the low mass emissions methodology in § 75.19 of this chapter or the NO_X emission measurement methodology in appendix E to part 75, the owner or operator may meet the requirements of this paragraph by developing and keeping on-site (or at a central location for unmanned facilities) a quality-assurance plan, as described in § 75.19 (e)(5) or in section 2.3 of appendix E and section 1.3.6 of appendix B to part 75 of this chapter.

(h) The owner or operator of any stationary gas turbine subject to the provisions of this subpart:

(1) Shall monitor the total sulfur content of the fuel being fired in the turbine, except as provided in paragraph (h)(3) of this section. The sulfur content of the fuel must be determined using total sulfur methods described in § 60.335(b)(10). Alternatively, if the total sulfur content of the gaseous fuel during the most recent performance test was less than 0.4 weight percent (4000 ppmw), ASTM D4084–82, 94, D5504–01, D6228–98, or Gas Processors Association Standard 2377–86 (all of which are incorporated by reference-see § 60.17), which measure the major sulfur compounds may be used; and

(2) Shall monitor the nitrogen content of the fuel combusted in the turbine, if the owner or operator claims an allowance for fuel bound nitrogen (*i.e.*, if an F-value greater than zero is being or will be used by the owner or operator to calculate STD in § 60.332). The nitrogen content of the fuel shall be determined using methods described in § 60.335(b)(9) or an approved alternative.

(3) Notwithstanding the provisions of paragraph (h)(1) of this section, the owner or operator may elect not to monitor the total sulfur content of the gaseous fuel combusted in the turbine, if the gaseous fuel is demonstrated to meet the definition of natural gas in § 60.331(u), regardless of whether an existing custom schedule approved by the administrator for subpart GG requires such monitoring. The owner or operator shall use one of the following sources of information to make the required demonstration:

(i) The gas quality characteristics in a current, valid purchase contract, tariff sheet or transportation contract for the gaseous fuel, specifying that the maximum total sulfur content of the fuel is 20.0 grains/100 scf or less; or

(ii) Representative fuel sampling data which show that the sulfur content of the gaseous fuel does not exceed 20 grains/100 scf. At a minimum, the amount of fuel sampling data specified in section 2.3.1.4 or 2.3.2.4 of appendix D to part 75 of this chapter is required.

(4) For any turbine that commenced construction, reconstruction or modification after October 3, 1977, but before July 8, 2004, and for which a custom fuel monitoring schedule has previously been approved, the owner or operator may, without submitting a special petition to the Administrator, continue monitoring on this schedule.

(i) The frequency of determining the sulfur and nitrogen content of the fuel shall be as follows:

(1) *Fuel oil.* For fuel oil, use one of the total sulfur sampling options and the associated sampling frequency described in sections 2.2.3, 2.2.4.1, 2.2.4.2, and 2.2.4.3 of appendix D to part 75 of this chapter (*i.e.*, flow proportional sampling, daily sampling, sampling from the unit's storage tank after each addition of fuel to the tank, or sampling each delivery prior to combining it with fuel oil already in the intended storage tank). If an emission allowance is being claimed for fuel-bound nitrogen, the nitrogen content of the oil shall be determined and recorded once per unit operating day.

(2) *Gaseous fuel.* Any applicable nitrogen content value of the gaseous fuel shall be determined and recorded once per unit operating day. For owners and operators that elect not to demonstrate sulfur content using options in paragraph (h)(3) of this section, and for which the fuel is supplied without intermediate bulk storage, the sulfur content value of the gaseous fuel shall be determined and recorded once per unit operating day.

(3) *Custom schedules.* Notwithstanding the requirements of paragraph (i)(2) of this section, operators or fuel vendors may develop custom schedules for determination of the total sulfur content of gaseous fuels, based on the design and operation of the affected facility and the characteristics of the fuel supply. Except as provided in paragraphs (i)(3)(i) and (i)(3)(ii) of this section, custom schedules shall be

substantiated with data and shall be approved by the Administrator before they can be used to comply with the standard in § 60.333.

(i) The two custom sulfur monitoring schedules set forth in paragraphs (i)(3)(i)(A) through (D) and in paragraph (i)(3)(ii) of this section are acceptable, without prior Administrative approval:

(A) The owner or operator shall obtain daily total sulfur content measurements for 30 consecutive unit operating days, using the applicable methods specified in this subpart. Based on the results of the 30 daily samples, the required frequency for subsequent monitoring of the fuel's total sulfur content shall be as specified in paragraph (i)(3)(i)(B), (C), or (D) of this section, as applicable.

(B) If none of the 30 daily measurements of the fuel's total sulfur content exceeds 0.4 weight percent (4000 ppmw), subsequent sulfur content monitoring may be performed at 12 month intervals. If any of the samples taken at 12-month intervals has a total sulfur content between 0.4 and 0.8 weight percent (4000 and 8000 ppmw), follow the procedures in paragraph (i)(3)(i)(C) of this section. If any measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section.

(C) If at least one of the 30 daily measurements of the fuel's total sulfur content is between 0.4 and 0.8 weight percent (4000 and 8000 ppmw), but none exceeds 0.8 weight percent (8000 ppmw), then:

(*1*) Collect and analyze a sample every 30 days for three months. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, follow the procedures in paragraph (i)(3)(i)(C)(*2*) of this section.

(*2*) Begin monitoring at 6-month intervals for 12 months. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, follow the procedures in paragraph (i)(3)(i)(C)(*3*) of this section.

(*3*) Begin monitoring at 12-month intervals. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, continue to monitor at this frequency.

(D) If a sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), immediately begin daily monitoring according to paragraph (i)(3)(i)(A) of this section. Daily monitoring shall continue until 30 consecutive daily samples, each having a sulfur content no greater than 0.8 weight percent (8000 ppmw), are obtained. At that point, the applicable procedures of paragraph (i)(3)(i)(B) or (C) of this section shall be followed.

(ii) The owner or operator may use the data collected from the 720-hour sulfur sampling demonstration described in section 2.3.6 of appendix D to part 75 of this chapter to determine a custom sulfur sampling schedule, as follows:

(A) If the maximum fuel sulfur content obtained from the 720 hourly samples does not exceed 20 grains/100 scf (*i.e.*, the maximum total sulfur content of natural gas as defined in § 60.331(u)), no additional monitoring of the sulfur content of the gas is required, for the purposes of this subpart.

(B) If the maximum fuel sulfur content obtained from any of the 720 hourly samples exceeds 20 grains/100 scf, but none of the sulfur content values (when converted to weight percent sulfur) exceeds 0.4 weight percent (4000 ppmw), then the minimum required sampling frequency shall be one sample at 12 month intervals.

(C) If any sample result exceeds 0.4 weight percent sulfur (4000 ppmw), but none exceeds 0.8 weight percent sulfur (8000 ppmw), follow the provisions of paragraph (i)(3)(i)(C) of this section.

(D) If the sulfur content of any of the 720 hourly samples exceeds 0.8 weight percent (8000 ppmw), follow the provisions of paragraph (i)(3)(i)(D) of this section.

(j) For each affected unit required to continuously monitor parameters or emissions, or to periodically determine the fuel sulfur content or fuel nitrogen content under this subpart, the owner or operator shall submit reports of excess emissions and monitor downtime, in accordance with § 60.7(c). Excess emissions shall be reported for all periods of unit operation, including startup, shutdown and malfunction. For the purpose of reports required under § 60.7(c), periods of excess emissions and monitor downtime that shall be reported are defined as follows:

(1) Nitrogen oxides.

(i) For turbines using water or steam to fuel ratio monitoring:

(A) An excess emission shall be any unit operating hour for which the average steam or water to fuel ratio, as measured by the continuous monitoring system, falls below the acceptable steam or water to fuel ratio needed to demonstrate compliance with § 60.332, as established during the performance test required in § 60.8. Any unit operating hour in which no water or steam is injected into the turbine shall also be considered an excess emission.

(B) A period of monitor downtime shall be any unit operating hour in which water or steam is injected into the turbine, but the essential parametric data needed to determine the steam or water to fuel ratio are unavailable or invalid.

(C) Each report shall include the average steam or water to fuel ratio, average fuel consumption, ambient conditions (temperature, pressure, and humidity), gas turbine load, and (if applicable) the nitrogen content of the fuel during each excess emission. You do not have to report ambient conditions if you opt to use the worst case ISO correction factor as specified in § 60.334(b)(3)(ii), or if you are not using the ISO correction equation under the provisions of § 60.335(b)(1).

(ii) If the owner or operator elects to take an emission allowance for fuel bound nitrogen, then excess emissions and periods of monitor downtime are as described in paragraphs (j)(1)(ii)(A) and (B) of this section.

(A) An excess emission shall be the period of time during which the fuel-bound nitrogen (N) is greater than the value measured during the performance test required in § 60.8 and used to determine the allowance. The excess emission begins on the date and hour of the sample which shows that N is greater than the performance test value, and ends with the date and hour of a subsequent sample which shows a fuel nitrogen content less than or equal to the performance test value.

(B) A period of monitor downtime begins when a required sample is not taken by its due date. A period of monitor downtime also begins on the date and hour that a required sample is taken, if invalid results are obtained. The period of monitor downtime ends on the date and hour of the next valid sample.

(iii) For turbines using NO_X and diluent CEMS:

(A) An hour of excess emissions shall be any unit operating hour in which the 4-hour rolling average NO_X concentration exceeds the applicable emission limit in § 60.332(a)(1) or (2). For the purposes of this subpart, a ''4-hour rolling average NO_X concentration'' is the arithmetic average of the average NO_X concentration measured by the CEMS for a given hour (corrected to 15 percent O_2 and, if required under § 60.335(b)(1), to ISO standard conditions) and the three unit operating hour average NO_X concentrations immediately preceding that unit operating hour.

(B) A period of monitor downtime shall be any unit operating hour in which sufficient data are not obtained to validate the hour, for either NO_X concentration or diluent (or both).

(C) Each report shall include the ambient conditions (temperature, pressure, and humidity) at the time of the excess emission period and (if the owner or operator has claimed an emission allowance for fuel bound nitrogen) the nitrogen content of the fuel during the period of excess emissions. You do not have to report ambient conditions if you opt to use the worst case ISO correction factor as specified in § 60.334(b)(3)(ii), or if you are not using the ISO correction equation under the provisions of § 60.335(b)(1).

(iv) For turbines required under paragraph (f) of this section to monitor combustion parameters or parameters that document proper operation of the NO_X emission controls:

(A) An excess emission shall be a 4-hour rolling unit operating hour average in which any monitored parameter does not achieve the target value or is outside the acceptable range defined in the parameter monitoring plan for the unit.

(B) A period of monitor downtime shall be a unit operating hour in which any of the required parametric data are either not recorded or are invalid.

(2) Sulfur dioxide. If the owner or operator is required to monitor the sulfur content of the fuel under paragraph (h) of this section:

(i) For samples of gaseous fuel and for oil samples obtained using daily sampling, flow proportional sampling, or sampling from the unit's storage tank, an excess emission occurs each unit operating hour included in the period beginning on the date and hour of any sample for which the sulfur content of the fuel being fired in the gas turbine exceeds 0.8 weight percent and ending on the date and hour that a subsequent sample is taken that demonstrates compliance with the sulfur limit.

(ii) If the option to sample each delivery of fuel oil has been selected, the owner or operator shall immediately switch to one of the other oil sampling options (*i.e.*, daily sampling, flow proportional sampling, or sampling from the unit's storage tank) if the sulfur content of a delivery exceeds 0.8 weight percent. The owner or operator shall continue to use one of the other sampling options until all of the oil from the delivery has been combusted, and shall evaluate excess emissions according to paragraph (j)(2)(i) of this section. When all of the fuel from the delivery has been burned, the owner or operator may resume using the as-delivered sampling option.

(iii) A period of monitor downtime begins when a required sample is not taken by its due date. A period of monitor downtime also begins on the date and hour of a required sample, if invalid results are obtained. The period of monitor downtime shall include only unit operating hours, and ends on the date and hour of the next valid sample.

* * * * *

(5) All reports required under § 60.7(c) shall be postmarked by the 30th day following the end of each calendar quarter.

■ 7. Section 60.335 is revised to read as follows:

§ 60.335 Test methods and procedures.

(a) The owner or operator shall conduct the performance tests required in § 60.8, using either

(1) EPA Method 20,

(2) ASTM D6522–00 (incorporated by reference, see § 60.17), or

(3) EPA Method 7E and either EPA Method 3 or 3A in appendix A to this part, to determine NO_X and diluent concentration.

(4) Sampling traverse points are to be selected following Method 20 or Method 1, (non-particulate procedures) and sampled for equal time intervals. The sampling shall be performed with a traversing single-hole probe or, if feasible, with a stationary multi-hole probe that samples each of the points sequentially. Alternatively, a multi-hole probe designed and documented to sample equal volumes from each hole may be used to sample simultaneously at the required points.

(5) Notwithstanding paragraph (a)(4) of this section, the owner or operator may test at few points than are specified in Method 1 or Method 20 if the following conditions are met:

(i) You may perform a stratification test for NO_X and diluent pursuant to

(A) [Reserved]

(B) The procedures specified in section 6.5.6.1(a) through (e) appendix A to part 75 of this chapter.

(ii) Once the stratification sampling is completed, the owner or operator may use the following alternative sample point selection criteria for the performance test:

(A) If each of the individual traverse point NO_X concentrations, normalized to 15 percent O_2, is within ± 10 percent of the mean normalized concentration for all traverse points, then you may use 3 points (located either 16.7, 50.0, and 83.3 percent of the way across the stack or duct, or, for circular stacks or ducts greater than 2.4 meters (7.8 feet) in diameter, at 0.4, 1.2, and 2.0 meters from the wall). The 3 points shall be located along the measurement line that exhibited the highest average normalized NO_X concentration during the stratification test; or

(B) If each of the individual traverse point NO_X concentrations, normalized to 15 percent O_2, is within ± 5 percent of the mean normalized concentration for all traverse points, then you may sample at a single point, located at least 1 meter from the stack wall or at the stack centroid.

(6) Other acceptable alternative reference methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the applicable nitrogen oxides emission limitation in § 60.332 and shall meet the performance test requirements of § 60.8 as follows:

(1) For each run of the performance test, the mean nitrogen oxides emission concentration (NO_{Xo}) corrected to 15 percent O_2 shall be corrected to ISO standard conditions using the following equation. Notwithstanding this requirement, use of the ISO correction equation is optional for: Lean premix stationary combustion turbines; units used in association with heat recovery steam generators (HRSG) equipped with duct burners; and units equipped with add-on emission control devices:

$$NO_X = (NO_{Xo})(P_r/P_o)^{0.5}\, e^{19\,(Ho - 0.00633)}\, (288°K/T_a)^{1.53}$$

Where:

NO_X = emission concentration of NO_X at 15 percent O_2 and ISO standard ambient conditions, ppm by volume, dry basis,

NO_{Xo} = mean observed NO_X concentration, ppm by volume, dry basis, at 15 percent O_2,

P_r = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure, mm Hg,

P_o = observed combustor inlet absolute pressure at test, mm Hg,

H_o = observed humidity of ambient air, g H_2O/g air,

e = transcendental constant, 2.718, and

T_a = ambient temperature, °K.

(2) The 3-run performance test required by § 60.8 must be performed within ± 5 percent at 30, 50, 75, and 90-to-100 percent of peak load or at four evenly-spaced load points in the normal operating range of the gas turbine, including the minimum point in the operating range and 90-to-100 percent of peak load, or at the highest achievable load point if 90-to-100 percent of peak load cannot be physically achieved in practice. If the turbine combusts both oil and gas as primary or backup fuels, separate performance testing is required for each fuel. Notwithstanding these

requirements, performance testing is not required for any emergency fuel (as defined in § 60.331).

(3) For a combined cycle turbine system with supplemental heat (duct burner), the owner or operator may elect to measure the turbine NO_X emissions after the duct burner rather than directly after the turbine. If the owner or operator elects to use this alternative sampling location, the applicable NO_X emission limit in § 60.332 for the combustion turbine must still be met.

(4) If water or steam injection is used to control NO_X with no additional post-combustion NO_X control and the owner or operator chooses to monitor the steam or water to fuel ratio in accordance with § 60.334(a), then that monitoring system must be operated concurrently with each EPA Method 20, ASTM D6522–00 (incorporated by reference, see § 60.17), or EPA Method 7E run and shall be used to determine the fuel consumption and the steam or water to fuel ratio necessary to comply with the applicable § 60.332 NO_X emission limit.

(5) If the owner operator elects to claim an emission allowance for fuel bound nitrogen as described in § 60.332, then concurrently with each reference method run, a representative sample of the fuel used shall be collected and analyzed, following the applicable procedures described in § 60.335(b)(9). These data shall be used to determine the maximum fuel nitrogen content for which the established water (or steam) to fuel ratio will be valid.

(6) If the owner or operator elects to install a CEMS, the performance evaluation of the CEMS may either be conducted separately (as described in paragraph (b)(7) of this section) or as part of the initial performance test of the affected unit.

(7) If the owner or operator elects to install and certify a NO_X CEMS under § 60.334(e), then the initial performance test required under § 60.8 may be done in the following alternative manner:

(i) Perform a minimum of 9 reference method runs, with a minimum time per run of 21 minutes, at a single load level, between 90 and 100 percent of peak (or the highest physically achievable) load.

(ii) Use the test data both to demonstrate compliance with the applicable NO_X emission limit under § 60.332 and to provide the required reference method data for the RATA of the CEMS described under § 60.334(b).

(iii) The requirement to test at three additional load levels is waived.

(8) If the owner or operator is required under § 60.334(f) to monitor combustion parameters or parameters indicative of proper operation of NO_X emission controls, the appropriate parameters shall be continuously monitored and recorded during each run of the initial performance test, to establish acceptable operating ranges, for purposes of the parameter monitoring plan for the affected unit, as specified in § 60.334(g).

(9) To determine the fuel bound nitrogen content of fuel being fired (if an emission allowance is claimed for fuel bound nitrogen), the owner or operator may use equipment and procedures meeting the requirements of:

(i) For liquid fuels, ASTM D2597–94 (Reapproved 1999), D6366–99, D4629–02, D5762–02 (all of which are incorporated by reference, *see* § 60.17); or

(ii) For gaseous fuels, shall use analytical methods and procedures that are accurate to within 5 percent of the instrument range and are approved by the Administrator.

(10) If the owner or operator is required under § 60.334(i)(1) or (3) to periodically determine the sulfur content of the fuel combusted in the turbine, a minimum of three fuel samples shall be collected during the performance test. Analyze the samples for the total sulfur content of the fuel using:

(i) For liquid fuels, ASTM D129–00, D2622–98, D4294–02, D1266–98, D5453–00 or D1552–01 (all of which are incorporated by reference, *see* § 60.17); or

(ii) For gaseous fuels, ASTM D1072–80, 90 (Reapproved 1994); D3246–81, 92, 96; D4468–85 (Reapproved 2000); or D6667–01 (all of which are incorporated by reference, see § 60.17). The applicable ranges of some ASTM methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples before analysis (with verification of the dilution ratio) may be used, subject to the prior approval of the Administrator.

(11) The fuel analyses required under paragraphs (b)(9) and (b)(10) of this section may be performed by the owner or operator, a service contractor retained by the owner or operator, the fuel vendor, or any other qualified agency.

(c) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) Instead of using the equation in paragraph (b)(1) of this section, manufacturers may develop ambient condition correction factors to adjust the nitrogen oxides emission level measured by the performance test as provided in § 60.8 to ISO standard day conditions.

[FR Doc. 04–14825 Filed 7–7–04; 8:45 am]

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Federal Register

Thursday,
July 8, 2004

Part IV

Department of Homeland Security

Coast Guard

33 CFR Parts 107 and 165

Order Governing the Anchorage and Movement of Vessels Into Cuban Territorial Waters; Notice, Unauthorized Entry Into Cuban Territorial Waters; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Order 2004–001]

Order Governing the Anchorage and Movement of Vessels Into Cuban Territorial Waters

AGENCY: Department of Homeland Security, Office of the Secretary.

ACTION: Notice.

SUMMARY: Under the provisions of 50 U.S.C. 191, whenever the President declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, the Secretary of Homeland Security (''the Secretary'') may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States. In Proclamation 7757 (69 FR 9515, March 1, 2004), the President expanded the scope of the national emergency and emergency authority declared in Proclamation 6867 (61 FR 8843, March 5, 1996), and authorized and directed the Secretary to make and issue rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of vessels, and delegated to the Secretary authority to approve such rules and regulations. By order, the Secretary has taken action to implement Proclamation 7757.

SUPPLEMENTARY INFORMATION: The President further directed that all powers and authorities delegated in Proclamation 7757 to the Secretary may be delegated by the Secretary to other officers and agents of the United States Government unless otherwise prohibited by law.

The President authorized the Secretary to make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions, or engage in unauthorized transactions, and thereby threaten a disturbance of international relations. Rules and regulations issued pursuant to Proclamation 7757 are effective immediately upon issuance as such rules and regulations involve a foreign affairs function of the United States and thus are not subject to the procedures in 5 U.S.C. 553.

By order, the Secretary has directed and authorized the United States Coast Guard to regulate the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions, or engage in unauthorized transactions, and thereby threaten a disturbance of international relations. Such regulation will be accomplished according to the provisions of 50 U.S.C. 191, and Presidential Proclamation 7757. The Secretary has authorized the Commandant of the United States Coast Guard, and subject to the direction of the Commandant, Commanders of a Coast Guard Area or District, to exercise all powers and authorities vested in the Secretary by 50 U.S.C. 191, and Presidential Proclamation 7757, including the power to make additional rules and regulations. This authority may be further delegated.

Secretary of Homeland Security Order 2004–001 supersedes Secretary of Transportation Order 96–3–7 (61 FR 9219 (March 1, 1996)).

DATE: Effective June 3, 2004. Secretary of Homeland Security Order 2004–001 will terminate when the national emergency declared by the President in Proclamation 6867, and expanded in scope by Proclamation 7757, terminates. The Office of the Secretary will publish a separate document in the **Federal Register** announcing termination of this order.

FOR FURTHER INFORMATION CONTACT: Commander John F. Koeppen, Office of Regulations and Administrative Law (G–LRA), U.S. Coast Guard Headquarters, telephone (202) 267–1534.

Dated: June 3, 2004.

Tom Ridge,

Secretary of Homeland Security.

Establishing Regulations Governing the Anchorage and Movement of Vessels Into Cuban Territorial Waters

By the authority vested in me as Secretary of Homeland Security by section 1 of title II of the Act of June 15, 1917 (the Act), as amended (50 U.S.C. 191), sections 877, 888, 1511, and 1512 of Public Law 107–296 (6 U.S.C. 457, 468, 551, 552), and Proclamation 7757, in which the President expanded the scope of the national emergency and emergency authority declared in Proclamation 6867, and delegated certain functions, I hereby order as follows:

Section 1: In furtherance of the purposes of Presidential Proclamation 7757, the Commandant of the United States Coast Guard, and subject to the direction of the Commandant, the Commanders of Coast Guard Areas or Districts (as described by 33 CFR part 3) are directed and authorized to regulate the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions, or result in unauthorized transactions, and thereby threaten a disturbance of international relations. Such regulation shall be according to the provisions of the Act and Presidential Proclamation 7757. All actions authorized under those authorities, including, but not limited to, inspection of any vessel, foreign or domestic, in the territorial waters of the United States, at any time; and placing guards on any such vessel; taking full possession and control of any such vessel and removing the officers and crew, and all other persons not specifically authorized to go or remain on board the vessel, when necessary to secure the rights and obligations of the United States, are authorized for carrying out the purposes of this Order.

Section 2: While the national emergency and emergency authority declared in Presidential Proclamation 6867 and expanded in scope by Presidential Proclamation 7757 continues to exist, the Commandant of the United States Coast Guard, and subject to the direction of the Commandant, the Commanders of Coast Guard Areas or Districts (as defined by 33 CFR part 3), are delegated and may exercise all powers and authorities vested in the Secretary of Homeland Security by the Act and Presidential Proclamation 7757, including the power to make additional rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States.

Section 3: All powers and authorities delegated by this Order to the Commandant of the United States Coast Guard, and subject to the direction of the Commandant, the Commanders of Coast Guard Areas or Districts (as defined by 33 CFR part 3), may be delegated by those officers to appropriate Captains of the Port of the United States Coast Guard unless otherwise prohibited by law.

Section 4: This Order supersedes Secretary of Transportation Order No. 96–3–7.

Dated: June 3, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–15589 Filed 7–6–04; 1:25 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 107 and 165

[USCG–2004–17509]

RIN 1625–AA86

Unauthorized Entry Into Cuban Territorial Waters

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard, pursuant to Presidential proclamation and order of the Secretary of Homeland Security, and after consultation with several Departments and agencies, is requiring U.S. vessels, and vessels without nationality, less than 100 meters (328 feet), located within the internal waters or the 12 nautical mile territorial sea of the United States, that thereafter enter Cuban territorial waters, to apply for and receive a Coast Guard permit. In establishing this requirement, the Coast Guard is also removing the security zone in the coastal waters adjacent to Florida and incorporating many of its requirements into this rule. That security zone required non-public vessels less than 50 meters (165 feet) that intended to enter Cuban territorial waters to receive Coast Guard authorization. This rule is necessary to provide for the safety of United States citizens and residents who may be subject to excessive force, including deadly force, upon entering Cuban territorial waters, to improve enforcement of the embargo against the Government of Cuba, and to prevent a threatened disturbance of the international relations of the United States.

DATES: This rule is effective on July 2, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket USCG–2004–17509, and are available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Brad Kieserman, Office of Law Enforcement (G–OPL), U.S. Coast Guard Headquarters, telephone (202) 267–1890. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553(a)(1), we did not publish a notice of proposed rulemaking (NPRM) for this regulation. This provision exempts traditional notice and comment rulemaking under the Administrative Procedure Act ''to the extent that there is involved * * * a military or foreign affairs function of the United States.'' The Coast Guard finds that immediate establishment of this rule is necessary to protect the safety of lives and property at sea, including lives that may be endangered by the use of excessive or deadly force by the Government of Cuba, to improve enforcement of the economic sanctions against the Government of Cuba, and to prevent threatened disturbance of the international relations of the United States. This rule is necessary to implement U.S. foreign policy and is enforceable using the Coast Guard's military assets. Accordingly, this rule involves a military function of the United States, and pursuant to section 1 of Proclamation 7757, this rule involves a foreign affairs function of the United States.

Even if the requirements of 5 U.S.C. 553 would otherwise be applicable, the Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to the public interest. On February 26, 2004, the President continued the national emergency relating to Cuba. 69 FR 9513. Also, on that day, the President, in Proclamation 7757, expanded the scope of that emergency and the emergency authority relating to the regulation and movement of vessels into Cuban territorial waters. 69 FR 9515. The President set out twelve reasons why there existed a worsening of the threat to U.S. international relations. These reasons included a threat of excessive force, including deadly force, against persons on board U.S. vessels, and sufficiently grave Cuban government actions to warrant a U.S. warning to Cuba that a mass migration would be viewed as a hostile act. Thus, the President directed the Secretary to take action (69 FR at 9516). Immediate action is needed to protect the safety of lives and property at sea, to improve enforcement of the economic sanctions against the Government of Cuba, and to prevent threatened disturbance to the international relations of the United States. This rule is based upon a Presidential declaration of a national emergency and order of the Secretary of Homeland Security. Opportunity for notice and public comment or advance publication of the rule was impracticable because of the need to take immediate action. This regulation is tailored to meet the needs of national security and the international relations of the United States, with a minimal burden on the public.

Background and Purpose

On March 1, 1996, the President of the United States signed Proclamation 6867 (''Proclamation 6867''), declaring a national emergency following the February 24, 1996, shooting down of two Brothers to the Rescue aircraft by Cuban armed forces (61 FR 8843). In Proclamation 6867, which addressed the disturbances or threatened disturbances of United States international relations, the President authorized the Secretary of Transportation to regulate the anchorage and movement of domestic and foreign vessels (61 FR 8843). Order No. 96–3–7, signed by the Secretary of Transportation, delegated this authority to the Commandant, United States Coast Guard (61 FR 9219). This authority was further delegated to the Commander, Seventh Coast Guard District and appropriate Captains of the Port (61 FR 9219). To secure the rights and obligations of the United States and to protect its citizens and residents from the use of excessive force upon them by foreign powers, the Coast Guard on March 1, 1996 (61 FR 9348), pursuant to its regulatory authority in 50 U.S.C. 191 and as supplemented by the authority delegated to the Secretary of Transportation in the Presidential Proclamation, established a security zone within the internal waters and territorial seas of the United States, adjacent to or within the coastal waters around southern Florida. This security zone prohibited private, noncommercial vessels, including foreign vessels, less than 50 meters in length, from departing the security zone with the intent to enter Cuban territorial waters, absent express authorization from the Captain of the Port (COTP).

On May 14, 1997 (62 FR 26390), the Coast Guard published a rule revising the security zone to prohibit a similar class of vessels from getting underway in or departing the security zone with the intent to enter Cuban territorial waters without express authorization from the COTP. Under the revised security zone, commercial vessels less than 50 meters in length became subject

to the same restrictions as private, noncommercial vessels less than 50 meters in length.

On July 17, 1998 (63 FR 38476), the Coast Guard published a rule again revising the security zone by expanding its geographic scope to the Florida peninsula, encompassing all of the internal waters and territorial seas of the United States adjacent to or within the State of Florida and within the boundaries of the Seventh Coast Guard District.

On November 2, 2000, the Coast Guard revised the security zone to better define enforcement and the process for applying for a permit to depart the zone (65 FR 65783).

On February 26, 2004, in Proclamation 7757 (69 FR 9515), the President of the United States expanded the scope of the national emergency and emergency authority declared in Proclamation 6867, and amended the reasons for which there exists a disturbance or threatened disturbance of the international relations of the United States. In Proclamation 7757, the President declared, *inter alia,* that: The United States has determined that Cuba is a state sponsor of terrorism; the Cuban government has demonstrated a ready and reckless willingness to use excessive force, including deadly force, against U.S. citizens and its own citizens; the entry of U.S.-registered vessels into Cuban territorial waters could result in injury to, or loss of life of, persons engaged in such conduct; Cuba has impounded U.S.-flagged vessels and forced them as a condition of release to violate U.S. laws; the objectives of the United States policy regarding Cuba are the end of the dictatorship and a rapid, peaceful transition to a representative democracy respectful of human rights and characterized by an open market economic system; a critical initiative to advance U.S. objectives is to deny resources to the repressive Cuban government; and the Cuban government has recently and over the last year taken a series of steps to destabilize relations with the United States, causing a sudden and worsening disturbance of U.S. international relations.

Consequently, the President has determined that the unauthorized entry of U.S.-registered vessels and vessels subject to the jurisdiction of the U.S. (which includes, but is not limited to, vessels without nationality pursuant to 46 U.S.C. App. 1903) into Cuban territorial waters is detrimental to the foreign policy of the United States, which is to deny monetary and material support to the repressive Government of Cuba, and that such unauthorized entries could threaten a disturbance of the international relations of the United States by facilitating Cuban government support of terrorism, the use of excessive or deadly force, and the continued existence of the Cuban government. Thus, the President continued and expanded the basis for continuing the declared emergency and the finding of a threatened disturbance of the international relations of the United States to include the unauthorized entry of certain vessels of the United States into Cuban territorial waters.

We have placed in the docket a copy of the President's Rose Garden Statement of October 10, 2003, in which the President announced new initiatives to strengthen enforcement of trade and travel restrictions with respect to Cuba. This announcement is in furtherance of long-standing U.S. foreign policy to bring about in Cuba the peaceful transition to democracy.

The United States imposes economic sanctions against Cuba to restrict the flow of currency transactions and goods to Cuba. The U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) regulates transactions involving Cuba, and the U.S. Department of Commerce, Bureau of Industry and Security (BIS) regulates exports, including ships and ship-stores.

Among other things, Proclamation 7757 authorizes the Secretary of Homeland Security (''the Secretary'') to issue rules and regulations to ensure that Coast Guard decisions regarding entry of U.S. vessels into Cuban territorial waters are made in a manner consistent with the decisions of other agencies responsible for economic sanctions enforcement. Specifically, in section 1 of Proclamation 7757, the President authorized the Secretary to make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions, or result in unauthorized transactions, and thereby threaten a disturbance of international relations.

In Order 2004–001, the Secretary delegated to the Commandant of the Coast Guard and, subject to the direction of the Commandant, to the several Coast Guard Area and District Commanders, the authority to make such rules and regulations, and vested in the Commandant and those officers all powers and authorities given to the Secretary in Proclamation 7757. This delegation to the Coast Guard from the Secretary necessarily includes the authority to establish and enforce rules and regulations regarding the movement and anchorage of certain vessels of the United States, and vessels without nationality, in U.S. territorial waters, including a requirement for the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels to present evidence of compliance with the regulations implementing economic sanctions against Cuba as a condition of usage of, and operations in, U.S. territorial waters. This rule, therefore, requires any vessel of the United States,[1] and vessels without nationality, less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels that depart U.S. territorial waters and thereafter enter Cuban territorial waters, regardless of whether such entry is made after an intervening entry into, passage through, or departure from any other foreign territory or territorial waters, to obtain a written permit from the Commander, Seventh Coast Guard District, or the District Commander's designee.

This rule does not apply to foreign flag vessels. The security zone removed by this rule applied to foreign flag vessels, except those in innocent passage. The security zone removed by this rule applied to vessels less than 50 meters (165 feet) in length. This rule applies to U.S. vessels, and vessels without nationality, less than 100 meters (328 feet) in length. U.S. vessels 100 meters and longer that enter Cuban territorial waters generally hold appropriate export licenses. Thus, this rule covers those vessels that generally do not hold appropriate export licenses. Such vessels must apply for and hold those licenses as a condition precedent to apply for a Coast Guard permit.

Further, Proclamation 7757 provides that the Secretary is authorized to receive assistance from other government agencies as necessary to carry out its purpose. Coupled with 14 U.S.C. 141, Proclamation 7757 provides the direction and authority to the Coast Guard to assist other agencies in the enforcement of the economic sanctions and receive assistance from other agencies in the enforcement of this rule.

Accordingly, in order for covered vessels to receive a Coast Guard permit to enter Cuban territorial waters, the Coast Guard will require the permit application to include a copy of a valid

[1] *See* 46 U.S.C. Chapters 121 and 123; 46 U.S.C. App. 1903; Art. 6, United Nations Convention on the Law of the Sea (UNCLOS).

and applicable license issued to the applicant by the U.S. Department of Commerce, Bureau of Industry and Security (BIS), pursuant to the Export Administration Regulations, 15 CFR chapter VII, subchapter C, parts 730–774 for the export of the vessel to Cuba. The Coast Guard will also require the permit application to include a copy of a valid and applicable specific license issued by the U.S. Department of the Treasury (OFAC), pursuant to the Cuban Assets Control Regulations, 31 CFR part 515, authorizing the applicant's travel-related transactions in Cuba. Applicants who do not require such an OFAC specific license are required to make a written certification to that effect identifying which OFAC general license applies or explaining why no OFAC license is required. Applications must provide the documentation required for each person to which this rule applies on board the particular vessel. The Coast Guard will work closely with OFAC and BIS to ensure alignment of effort in the enforcement of the economic sanctions against Cuba. This will allow the Coast Guard to ensure that its decisions on permits for entry into Cuban territorial waters are made in a manner which is consistent with the decisions of those agencies responsible for economic sanctions enforcement.

This rule removes the security zone around the Florida peninsula, because it is no longer necessary as the new rule applies nation-wide to all covered vessels and persons within U.S. territorial waters.

This rule will continue so long as the national emergency and regulatory authority as declared by the President in Presidential Proclamation 6867, and expanded in scope by Proclamation 7757, continues pursuant to section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)). The Coast Guard intends to publish annually in the **Federal Register** a notice of the status of this rule.

Discussion of Rule

This rule creates a new 33 CFR part 107 to establish a place in the CFR for nation-wide vessel and facility control measures and limited access areas. This new part is placed within subchapter H of chapter I, title 33, as a follow-on to the national maritime security rules published last year (68 FR 60448; 68 FR 39240). The Coast Guard intends that this and any other nation-wide measures regarding control of vessels or facilities, or the establishment of nation-wide limited access areas (security zones, safety zones, or other types of limited or controlled access areas), for purposes of maritime security, will be placed in new 33 CFR part 107. Local and regional regulated navigation areas and limited access areas will continue to be placed in 33 CFR part 165.

The Coast Guard has determined that controlling entry of U.S. vessels, and vessels without nationality, into Cuban waters and controlling the departure of U.S. vessels, and vessels without nationality, bound for Cuba is necessary to protect the safety of United States citizens and residents, to improve enforcement of the economic sanctions against the Government of Cuba, and to prevent threatened disturbance of the international relations of the United States.

This rule applies to vessels of the United States (individually or corporately owned), and vessels without nationality, less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of vessels of the United States and vessels without nationality, located within U.S. territorial waters that depart those waters and thereafter enter Cuban territorial waters, regardless of whether such entry is made after an intervening entry into, passage through, or departure from any other foreign territory or territorial waters. Accordingly, the rule continues to apply to a covered vessel that departs U.S. territorial waters and enters the territorial waters of a third country before entering Cuban waters. The rule may be enforced against U.S. vessels or vessels without nationality that have operated within the U.S. 12 nautical mile territorial sea or inland waters before entering Cuban territorial waters. This rule does not apply to warships, foreign vessels, other public vessels operated for non-commercial purposes, or U.S. vessels entering Cuban territorial waters under force majeure. If necessary, pursuant to the authority in Proclamation 7757, the Coast Guard in the future may issue rules or regulations that apply to other vessels subject to the jurisdiction of the United States.

Vessels and persons to which the rule applies cannot move within or depart U.S. territorial waters and thereafter enter Cuban territorial waters without a Coast Guard permit. If issued, the permit must be kept on board the vessel. The Coast Guard may issue appropriate orders to control the movement and anchorage of all vessels covered by the rule. Additionally, the Coast Guard may remove all persons not specifically authorized by the Coast Guard to go or remain on board covered vessels, may place guards on covered vessels, and may take full or partial possession or control of any such vessel or part thereof. Such actions to be taken are in the discretion of the Coast Guard as deemed necessary to ensure compliance with the provisions of the rule or any other order issued under the authority of the rule. Nothing in this rule precludes the Coast Guard, or any other agency, from taking action pursuant to any other applicable authority.

Even if a covered vessel has not applied for a permit, where there is an articulable basis to believe that the vessel intends to enter Cuban territorial waters, as a condition of moving in or departing from U.S. territorial waters, the Coast Guard has the discretion to require the owner, agent, master, officer, or person in charge, or any member of the crew of any covered vessel to provide verbal assurance to the Coast Guard that the vessel will not enter Cuban territorial waters. Likewise, the Coast Guard may require the owners, agents, masters, officers, or persons in charge of covered vessels to identify all persons on board the vessel and provide verbal assurances that all persons on board have received actual notice of these regulations. The failure of an owner, agent, master, officer, or person in charge, or any member of the crew of any vessel (including all auxiliary vessels) to provide requested verbal assurances shall not be used as the sole basis for seizing the vessel for forfeiture under this rule. Additionally, where there is an articulable basis to believe that a covered vessel located in U.S. territorial waters intends to enter Cuban territorial waters, the Coast Guard may require that the vessel apply for a permit as a condition of departure.

Applicants may apply to the Chief of Operations, Seventh Coast Guard District in Miami, FL, for a permit. Applicants may mail or fax the required information and documentation for a permit to the Chief of Operations, Seventh Coast Guard District in Miami, FL. The Commander, Seventh Coast Guard District, may make available to the public documents and other information that may aid the public in the application process. There is no required form.

Even if an applicant provides all of the information and documentation required by this rule in the permit application, the Coast Guard nevertheless will consider any available information that reasonably supports a conclusion that entry by the vessel or persons on board into Cuban territorial waters might: Subject the vessel or persons on board to the use of excessive or deadly force by the Government of Cuba; result in unauthorized transactions; or threaten a disturbance of the international relations of the

United States. In such a case, the Coast Guard intends to consult with other appropriate agencies prior to taking final agency action.

Applicants denied permits may request the Seventh Coast Guard District Commander to reconsider that decision. The Seventh District Commander's decision on a request for reconsideration will constitute final agency action.

Covered vessels and persons will be held to a standard of strict civil liability for any entry into Cuban territorial waters without a permit, or for failure to maintain the permit on board the vessel. Noncompliance with the permit application and permit carriage provisions may result in a civil penalty of not more than $25,000 for each day of violation. The Coast Guard will not impose strict liability if the failure to obtain or carry a permit results primarily from an act of war, force majeure, or the negligence of the United States.

Although the applicable statute (50 U.S.C. 192) provides for strict criminal liability for non-compliant owners, agents, masters, officers, persons in charge and members of the crew, the Coast Guard has chosen not to include such criminal penalties for violation of the rule without the addition of scienter. Accordingly, any person who knowingly fails to comply with any requirements of, or order issued pursuant to, this rule, or knowingly obstructs or interferes with the exercise of any power conferred by this rule may be subject to criminal penalties of imprisonment of not more than 10 years, a penalty of not more than $10,000, seizure and forfeiture of the vessel, and a civil penalty of not more than $25,000 for each day of violation. Making false statements or writings may subject the actor to imprisonment for not more than five years or a fine, or both, pursuant to 18 U.S.C. 1001.

The civil and criminal penalties provided for in this rule are separate from and in addition to any enforcement action that any other agency may seek for violations of the statutes and regulations administered by such agencies.

Regulatory Evaluation

This rule is a ''significant regulatory action'' under section 3(f)(4) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. This rule implements Presidential Proclamation 7757, which expanded the scope of the national emergency and authority to regulate the anchorage and movement of vessels into Cuban territorial waters.

Based on the limited number of boarding events within the last year in the geographic area most affected by this rule, we expect the economic impact of this rule to be minimal. In that geographic area, the Coast Guard boards on average 807 vessels each year that would be affected by this rule. The vast majority of these vessels have permits to be in Cuban waters. On average, each boarding takes 90 minutes for officers to check for permits and other documents. The Coast Guard estimates the total annual cost to vessel owners from these boarding operations to be $66,577.

This rule is ''significant'' under the regulatory policies and procedures of the Department of Homeland Security. The requirements of this rule, although applicable nation-wide, are necessary to protect the safety of lives and property at sea, improve enforcement of the economic sanctions against Cuba, and to prevent threatened disturbance of the international relations of the United States. The requirements in this rule for persons or vessels are necessary to the national interest as described above and to prevent threatened disturbance of the international relations of the United States. This rule will be enforced so long as the national emergency and regulatory authority established in Proclamation 6867, and expanded in scope by Proclamation 7757, continues.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Brad Kieserman, Office of Law Enforcement (G–OPL), U.S. Coast Guard Headquarters, listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Unauthorized entry into Cuban territorial waters.

OMB Control Number: 1625–0106.

Summary of the Collection of Information: The Coast Guard requires applicant identifying information, vessel registry, and federal export and transaction license information from applicants and U.S. vessels that apply for permits to enter Cuban territorial waters. This rule will amend 33 CFR subchapter H to require:

Applicants must report the following information via facsimile or mail, or by other means prescribed by the District Commander for the convenience of the applicant:

a. The name, address, and telephone number of the applicant.

b. A copy of the valid vessel registration.

c. A copy of a valid and applicable export license issued to the applicant by the U.S. Department of Commerce, Bureau of Industry and Security, pursuant to the Export Administration Regulations, 15 CFR chapter VII, subchapter C, parts 730–774 for the export of the vessel to Cuba.

d. A copy of a valid and applicable specific license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), pursuant to the Cuban Assets Control

Regulations, 31 CFR part 515, authorizing the applicant's travel-related transactions in Cuba. Applicants who do not require such an OFAC specific license shall make a written certification to that effect identifying which OFAC general license applies or explaining why no OFAC license is required.

e. Applications must provide the documentation required above for each person to which this rule applies on board the particular vessel.

The changes will be in effect through January 31, 2005.

Need for Information: To provide for the safety of United States citizens and residents, and their property, improve enforcement of the economic sanctions against Cuba, and to prevent threatened disturbances of the international relations of the United States.

Proposed use of Information: This information is required to enhance maritime security, control vessel anchorages and movement, and enforce regulations.

Description of the Respondents: The respondents are owners, agents, masters, officers, persons in charge or other applicants associated with U.S. vessels, and vessels without nationality, less than 100 meters (328 feet) in length that may enter Cuban territorial waters.

Number of Respondents: The existing OMB-approved collection number of respondents is zero (0). This rule will increase the number of respondents by 532 to a total of 532.

Frequency of Response: The existing OMB-approved collection annual number of responses is zero (0). This rule will increase the number of responses by 532 to a total of 532.

Burden of Response: The existing OMB-approved collection burden of response is zero (0). This rule will increase the burden of response by 15 minutes (0.25 hours) to a total of 15 minutes (0.25 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is zero (0). This rule will increase the total annual burden by 133 hours to a total of 133 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding this rule, we asked for ''emergency processing'' of our request. We received OMB approval for the collection of information on July 2, 2004. It is valid through January 31, 2005.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by August 9, 2004.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. We received OMB approval for the collection of information on July 2, 2004. It is valid through January 31, 2005.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraphs (34)(a), (d) and (g) of the Instruction, from further environmental documentation. This rule establishes procedures for U.S. vessels to receive permission to depart U.S waters and enter Cuban waters and concerns the documentation and inspection of such vessels.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 107

Harbors, Facilities, Marine safety, Maritime security, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Vessels, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard adds part 107 to subchapter H of chapter I, title 33 of the Code of Federal Regulations, and amends 33 CFR part 165 as follows:

■ 1. Add part 107 to subchapter H of chapter I, title 33 of the Code of Federal Regulations to read as follows:

PART 107—NATIONAL VESSEL AND FACILITY CONTROL MEASURES AND LIMITED ACCESS AREAS

Subpart A—[Reserved]

Subpart B—Unauthorized Entry Into Cuban Territorial Waters

Sec.

Authority: 50 U.S.C. 191, 192, 194, 195; 14 U.S.C. 141; Presidential Proclamation 6867, 61 FR 8843, 3 CFR, 1996 Comp., p. 8; Presidential Proclamation 7757, 69 FR 9515 (March 1, 2004); Secretary of Homeland Security Order 2004–001; Department of Homeland Security Delegation No. 0170.1; and 33 CFR 1.05–1.

Subpart A—[Reserved]

Subpart B—Unauthorized Entry Into Cuban Territorial Waters

§ 107.200 Definitions.

Unless otherwise specified, as used in this subpart:

Auxiliary vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water attached to, or embarked in, another vessel to which this subpart applies.

Cuban territorial waters means the territorial sea and internal waters of Cuba determined in accordance with international law.

Owner, agent, master, officer, or person in charge means the persons or entities that maintain operational control over any vessel subject to the requirements of this subpart.

U.S. territorial waters has the same meaning as provided in 50 U.S.C. 195.

Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, including auxiliary vessels.

Vessel of the United States means—

(1) a vessel documented under chapter 121 of title 46 or a vessel numbered as provided in chapter 123 of that title;

(2) a vessel owned in whole or part by—

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other legal entity, created and authorized to own vessels under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of United States law;

(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation;

(4) A vessel without nationality as defined in 46 U.S.C. Appendix 1903(c)(2)–(3); or

(5) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas.

§ 107.205 Purpose and delegation.

The purpose of this subpart is to implement Presidential Proclamation 7757, and Secretary of Homeland Security Order 2004–001. All powers and authorities granted to officers of the Coast Guard by this subpart may be delegated to other officers and agents of the Coast Guard unless otherwise prohibited by law.

§ 107.210 Applicability.

(a) This subpart applies to:

(1) Vessels of the United States less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels, that depart U.S. territorial waters and thereafter enter Cuban territorial waters, regardless of whether such entry is made after an intervening entry into, passage through, or departure from any other foreign territory or territorial waters;

(2) Vessels of the United States less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels that are located at or get underway from a berth, pier, mooring, or anchorage in U.S. territorial waters, or depart U.S. territorial waters with the intent to enter Cuban territorial waters; and

(3) Any person who knowingly fails to comply with this subpart or order given under this subpart, or knowingly obstructs or interferes with the exercise of any power conferred by this subpart.

(b) This subpart does not apply to: Foreign vessels, as defined by 46 U.S.C. 2101(12), public vessels, as defined by 46 U.S.C. 2101(24) operated for non-commercial purposes, or vessels of the United States entering Cuban territorial waters under force majeure.

§ 107.215 Regulations.

(a) Each person or vessel to which this subpart applies may not get underway or depart from U.S. territorial waters without a written permit from the Commander, Seventh Coast Guard District, or the District Commander's designee. Permits may be obtained pursuant to the process established in § 107.220. The owner, agent, master, or person in charge of the vessel must maintain the written permit for the vessel on board the vessel.

(b) Each person or vessel to which this subpart applies must obey any oral or written order issued by a Coast Guard Area or District Commander, or their designees, who may issue oral or written orders to control the anchorage or movement of such vessels and persons. Designees include Captains of the Port, and commissioned, warrant and petty officers of the Coast Guard.

(c) No person or vessel to which this subpart applies may obstruct or interfere with the exercise of any power conferred by this subpart.

(d) Coast Guard commissioned, warrant and petty officers may go or remain on board a vessel subject to this subpart, may place guards on the subject vessel, may remove all persons not specifically authorized by the Coast

Guard to go or remain on board the subject vessel, and may take full or partial possession or control of any such vessel or part thereof, or person on board. Such actions to be taken are in the discretion of the Coast Guard Area or District Commander, or their designees, as deemed necessary to ensure compliance with this subpart and any order given pursuant thereto.

(e) Where there is a reasonable, articulable basis to believe a vessel to which this subpart applies intends to enter Cuban territorial waters, any Coast Guard commissioned, warrant, or petty officer may require the owners, agents, masters, officers, or persons in charge, or any member of the crew of any such vessel to provide verbal assurance that the vessel will not enter Cuban territorial waters as a condition for a vessel to get underway from a berth, pier, mooring, or anchorage in U.S. territorial waters, or to depart from U.S. territorial waters. A Coast Guard commissioned, warrant, or petty officer may require the owners, agents, masters, officers, or persons in charge of the vessel to identify all persons on board the vessel and provide verbal assurances that all persons on board have received actual notice of these regulations. The failure of an owner, agent, master, officer, or person in charge, or any member of the crew of any vessel (including all auxiliary vessels) to which this subpart applies to provide requested verbal assurances shall not be used as the sole basis for seizing the vessel for forfeiture under this subpart.

(f) The provisions of this subpart are in addition to any powers conferred by law upon Coast Guard commissioned, warrant, or petty officers, and not in limitation of any powers conferred by law or regulation upon such officers, or any other officers of the United States.

§ 107.220 Permits.

(a) Applications for a permit may be obtained by writing or calling the Chief of Operations at Commander, Seventh Coast Guard District (o), 909 SE First Avenue, Miami, FL 33131, telephone (305) 415–6920, or by such other means as the District Commander may make available to the public. The completed application may be returned via regular mail or facsimile to the Chief of Operations at Commander, Seventh Coast Guard District (o), 909 SE First Avenue, Miami, FL 33131, facsimile (305) 415–6925, or by other means prescribed by the District Commander for the convenience of the applicant.

(b) All applications must be written in English and legible.

(c) The information and documentation in this paragraph must be provided with the application in order for it to be complete and considered by the Coast Guard:

(1) The name, address, and telephone number of the applicant;

(2) A copy of the valid vessel registration;

(3) A copy of a valid and applicable license issued to the applicant by the U.S. Department of Commerce, Bureau of Industry and Security, pursuant to the Export Administration Regulations, 15 CFR chapter VII, subchapter C, parts 730–774 for the export of the vessel to Cuba; and

(4) A copy of a valid and applicable specific license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), pursuant to the Cuban Assets Control Regulations, 31 CFR part 515, authorizing the applicant's travel-related transactions in Cuba. Applicants who do not require such an OFAC specific license shall make a written certification to that effect identifying which OFAC general license applies or explaining why no OFAC license is required.

(d) Such applications must provide the documentation required by § 107.220(c) for each person to which this subpart applies on board the particular vessel.

(e) Upon receiving an application for a permit, the Seventh Coast Guard District Commander (o) has ten (10) calendar days from the receipt of the application to decide whether the application is complete and, if so, whether a permit will be issued or denied. Applicants will be notified in writing of the decision to issue or deny a permit. Incomplete applications will be returned to the applicant, along with the reasons why such application was deemed incomplete.

§ 107.225 Appeals.

(a) Upon written notification by the Coast Guard that an application has been denied, the applicant may request the Seventh Coast Guard District Commander to reconsider. The request to reconsider must be in writing, must be made within five (5) business days from the date of receipt of the initial denial, and must contain complete supporting documentation and evidence which the applicant wishes to have considered. Requests for reconsideration must be mailed to Commander, Seventh Coast Guard District (d), 909 SE First Avenue, Miami, FL 33131.

(b) Upon receipt of the request to reconsider, the Seventh Coast Guard District Commander may direct a representative to gather and submit documentation or other evidence, which, in the judgment of the Seventh District Commander, would be necessary or helpful to a resolution of the request. If gathered and submitted, a copy of this documentation and evidence shall be made available to the applicant. The applicant shall be afforded five (5) business days from the date of receipt of documentation and evidence gathered by the Seventh Coast Guard District Commander's representative to submit rebuttal materials. On or before the fifteenth (15th) calendar day following submission of all materials, the Seventh Coast Guard District Commander shall issue a ruling, in writing, on the request to reconsider. The ruling may reverse the initial denial, or, if the denial is upheld, must contain the specific basis for denial of the application upon reconsideration.

(c) The Seventh Coast Guard District Commander's denial of a request for reconsideration taken under paragraph (b) of this section constitutes final agency action.

§ 107.230 Enforcement.

(a) *Unauthorized departure or entry, or both.*

(1) Vessels and persons to whom this subpart applies, as described in § 107.210(a)(1), that do not comply with § 107.215(a), or any order issued pursuant to this subpart may be subject to a civil penalty of not more than $25,000 for each day of violation.

(2) Vessels and persons to whom § 107.230(a)(1) applies shall be held to a standard of strict liability for any entry into Cuban territorial waters without a permit or for failure to maintain the permit for the vessel on board the vessel as required under this subpart, except that strict liability will not be imposed if the failure to obtain or carry a permit results primarily from an act of war, force majeure, or the negligence of the United States.

(b) *Knowing failure to comply.* Any person to whom this subpart applies as described in §§ 107.210(a)(2) or (a)(3) who knowingly fails to comply with this subpart or order given under this subpart, or knowingly obstructs or interferes with the exercise of any power conferred by this subpart may be subject to:

(1) Imprisonment for not more than 10 years;

(2) A monetary penalty of not more than $10,000;

(3) Seizure and forfeiture of the vessel; and

(4) A civil penalty of not more than $25,000 for each day of violation.

(c) *False Statements.* Violation of 18 U.S.C. 1001 may result in imprisonment

for not more than five years or a fine, or both.

(d) *Other enforcement.* The civil penalties provided for in this subpart are separate from and in addition to any enforcement action that any other agency may seek for violations of the statutes and regulations administered by such agencies.

§ 107.240 Continuation.

This subpart will continue to be enforced so long as the national emergency with respect to Cuba, and the emergency authority relating to the regulation of the anchorage and movement of vessels declared in Proclamation 6867, and expanded in scope by Proclamation 7757, continues.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 2. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.T07–013 [Removed].

■ 3. Remove § 165.T07–013.

Dated: July 2, 2004.

Thomas H. Collins,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 04–15590 Filed 7–6–04; 1:25 pm]

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Montana; comments due by 7-15-04; published 6-1-04 [FR 04-12282]

LIST OF PUBLIC LAWS

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Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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H.R. 3378/P.L. 108–266
Marine Turtle Conservation Act of 2004 (July 2, 2004; 118 Stat. 791)

H.R. 3504/P.L. 108–267
To amend the Indian Self-Determination and Education Assistance Act to redesignate the American Indian Education Foundation as the National Fund for Excellence in American Indian Education. (July 2, 2004; 118 Stat. 797)

H.R. 4322/P.L. 108–268
To provide for the transfer of the Nebraska Avenue Naval Complex in the District of Columbia to facilitate the establishment of the headquarters for the Department of Homeland Security, to provide for the acquisition by the Department of the Navy of suitable replacement facilities, and for other purposes. (July 2, 2004; 118 Stat. 799)

S. 1848/P.L. 108–269

To amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in the State of Oregon. (July 2, 2004; 118 Stat. 803)

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